

MONTANA LEGISLATIVE HISTORY

Chapter 125 19 95

Bill H 69 S _____

Original bill & history ✓ c

H. Committee on Judiciary

Hearing Date(s) Jan 18 ✓ c

Jan 19 ✓ c

_____ c

_____ c

Date Out Jan 21 ✓ c

S. Committee on Judiciary

Hearing Date(s) Mar 01 ✓ c

Mar 02 ✓ c

_____ c

_____ c

Mar 02 ✓ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

2/04 RETURNED TO HOUSE
 2/06 SIGNED BY SPEAKER
 2/06 SIGNED BY PRESIDENT
 2/06 TRANSMITTED TO GOVERNOR
 2/08 SIGNED BY GOVERNOR
 CHAPTER NUMBER 40
 EFFECTIVE DATE: 10/01/95

HB 68

INTRODUCED BY SCHWINDEN
 GENERALLY REVISE INDUSTRIAL SAFETY LAWS
 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

12/29	INTRODUCED		
12/30	FISCAL NOTE REQUESTED		
1/02	FIRST READING		
1/02	REFERRED TO BUSINESS & LABOR		
1/04	HEARING		
1/09	FISCAL NOTE RECEIVED		
1/09	FISCAL NOTE PRINTED		
1/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/24	2ND READING PASSED AS AMENDED	90	9
1/25	3RD READING PASSED	85	14
	TRANSMITTED TO SENATE		
1/26	FIRST READING		
1/26	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/28	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/18	2ND READING CONCURRED AS AMENDED	45	1
3/20	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/31	2ND READING AMENDMENTS NOT CONCURRED	79	18
3/31	FREE CONFERENCE COMMITTEE APPOINTED		
4/07	HEARING		
4/07	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/08	2ND READING FREE CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	94	3
4/10	3RD READING FREE CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	91	8
	SENATE		
4/04	FREE CONFERENCE COMMITTEE APPOINTED		
4/07	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/08	2ND READING FREE CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	48	0
4/10	3RD READING FREE CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	49	0
4/11	SIGNED BY SPEAKER		
4/12	SIGNED BY PRESIDENT		
4/17	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 514		
	EFFECTIVE DATE: 07/01/95		

HB 69

INTRODUCED BY FISHER, ET AL.
 GENERALLY REVISE LAWS RELATING TO PROTECTION AND TREATMENT
 OF VICTIMS OF CRIME AND TO PAYMENT OF RESTITUTION BY THE
 OFFENDER
 BY REQUEST OF THE DEPARTMENT OF JUSTICE AND THE BOARD OF
 CRIME CONTROL

12/29 INTRODUCED

12/30	FISCAL NOTE REQUESTED		
1/02	FIRST READING		
1/02	REFERRED TO JUDICIARY		
1/11	FISCAL NOTE RECEIVED		
1/11	FISCAL NOTE PRINTED		
1/18	HEARING		
1/24	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/25	2ND READING PASSED AS AMENDED	100	0
1/26	3RD READING PASSED	99	0
	TRANSMITTED TO SENATE		
1/27	FIRST READING		
1/27	REFERRED TO JUDICIARY		
3/01	HEARING		
3/03	COMMITTEE REPORT—BILL CONCURRED		
3/04	2ND READING CONCURRED	43	0
3/06	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/07	SIGNED BY SPEAKER		
3/09	SIGNED BY PRESIDENT		
3/09	TRANSMITTED TO GOVERNOR		
3/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 125		
	EFFECTIVE DATE: 10/01/95		

INTRODUCED BY CLARK

SUBMIT TO QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II, SECTION 28, OF THE MONTANA CONSTITUTION TO PROVIDE THAT AFTER STATE SUPERVISION OF A PERSON CONVICTED OF A FELONY HAS TERMINATED, THE LEGISLATURE MAY PROHIBIT, PLACE CONDITIONS UPON, AND PENALIZE POSSESSION OF FIREARMS AND OTHER WEAPONS BY THAT PERSON

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

12/29	INTRODUCED
1/02	FIRST READING
1/02	REFERRED TO JUDICIARY
2/17	TABLED IN COMMITTEE
2/23	MISSED TRANSMITTAL DEADLINE
	DIED IN COMMITTEE

INTRODUCED BY DEBRUYCKER

REVISE LAWS RELATING TO PUNITIVE DAMAGES AWARDS IN CIVIL CASES

12/29	INTRODUCED
12/30	FISCAL NOTE REQUESTED
1/02	FIRST READING
1/02	REFERRED TO JUDICIARY
1/05	HEARING
1/06	FISCAL NOTE RECEIVED
1/06	FISCAL NOTE PRINTED
1/11	TABLED IN COMMITTEE
2/23	MISSED TRANSMITTAL DEADLINE
	DIED IN COMMITTEE

HOUSE BILL NO. 69

INTRODUCED BY FISHER

BY REQUEST OF THE DEPARTMENT OF JUSTICE AND THE BOARD OF CRIME CONTROL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE PROTECTION AND TREATMENT OF VICTIMS OF CRIME AND TO THE PAYMENT OF RESTITUTION BY THE OFFENDER; AMENDING SECTIONS 44-2-601, 44-5-303, 45-9-205, 46-11-701, 46-18-101, 46-18-112, 46-18-113, 46-18-115, 46-18-201, 46-18-202, 46-18-222, 46-18-241, 46-18-242, 46-18-243, 46-18-244, 46-18-245, 46-18-246, 46-18-247, 46-18-302, 46-23-202, 46-23-210, 46-23-215, 46-23-405, 46-23-1011, 46-23-1021, 46-23-1025, 46-24-103, 46-24-104, 46-24-201, 46-24-202, 46-24-203, 46-24-205, AND 53-9-128, MCA; REPEALING SECTION 46-23-204, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 44-2-601, MCA, is amended to read:

"44-2-601. Notification of escape or release from confinement. (1) The notice required by subsection (2) must be given if:

(a) a person committed to a hospital or mental health facility under Title 46, chapter 14, escapes or is released from confinement;

(b) a person confined in an institution other than a jail pending or during trial for a criminal offense involving the use or threat of physical force or violence or confined in a prison or other state institution after conviction of a criminal offense involving the use or threat of physical force or violence or after being designated as a dangerous offender under 46-18-404 escapes or is released from confinement; or

(c) a person confined in a jail pending or during trial for a criminal offense involving the use or threat of physical force or violence or confined in a jail after conviction of a criminal offense involving the use or threat of physical force or violence or after being designated as a dangerous offender under 46-18-404 escapes from confinement.

(2) If a person referred to in subsection (1) escapes or is released from confinement, the institution in which the person was confined shall notify:

1 (a) the sheriff or other law enforcement officials in the county in which the offense occurred;

2 (b) the sheriff or other law enforcement officials in the county or counties, if known, in which a
3 victim or the victims of the offense reside at the time of the escape or release;

4 (c) the sheriff or other law enforcement officials in the county, if known, in which the person
5 intends to reside upon leaving confinement;

6 (d) the sheriff or other law enforcement officials in the county in which the jail, prison, hospital,
7 mental health facility, or other institution from which the person escaped or was released is located; and

8 (e) a victim of the offense who has requested notification in the event of an escape or a release
9 of the person; and

10 ~~(e)(f)~~ a court that has requested that it be notified in the event of an escape or a release or an
11 escape of the person."

12
13 **Section 2.** Section 44-5-303, MCA, is amended to read:

14 **"44-5-303. Dissemination of confidential criminal justice information.** ~~Dissemination~~ (1) Except
15 as provided in subsection (2), dissemination of confidential criminal justice information is restricted to
16 criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by
17 a district court upon a written finding that the demands of individual privacy do not clearly exceed the
18 merits of public disclosure.

19 (2) If the prosecutor determines that dissemination would not jeopardize a pending investigation
20 or other criminal proceeding of confidential criminal justice information, the information may be
21 disseminated to a victim of the offense by the prosecutor or by the investigating law enforcement agency
22 after consultation with the prosecutor.

23 (3) A Unless otherwise ordered by a court, a person or criminal justice agency that accepts
24 confidential criminal justice information assumes equal responsibility for the security of ~~such~~ the information
25 with the originating agency. Whenever confidential criminal justice information is disseminated, it must be
26 designated as confidential."

27
28 **NEW SECTION. Section 3. Nondisclosure of information about victim.** (1) If a victim of an offense
29 requests confidentiality, a criminal justice agency may not disseminate, except to another criminal justice
30 agency, the address, telephone number, or place of employment of the victim or a member of the victim's

family unless disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement purposes, or is authorized by a district court upon a showing of good cause.

(2) The court may not compel a victim or a member of the victim's family who testifies in a criminal justice proceeding to disclose on the record in open court a residence address or place of employment unless the court determines that disclosure of the information is necessary.

(3) A criminal justice agency may not disseminate to the public any information directly or indirectly identifying the victim of an offense committed under 45-5-502, 45-5-503, 45-5-504, or 45-5-507 unless disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement purposes, or is authorized by a district court upon a showing of good cause.

Section 4. Section 45-9-205, MCA, is amended to read:

"45-9-205. Exemption from mandatory minimum sentences. If a court imposes any of the sentencing alternatives specified in 45-9-202, the mandatory minimum sentences provided in 46-18-201(4)(5) do not apply."

Section 5. Section 46-11-701, MCA, is amended to read:

"46-11-701. Pretrial proceedings -- exclusion of public and sealing of records. (1) Except as provided in this section, pretrial proceedings and records of those proceedings are open to the public. If, at the pretrial proceedings, testimony or evidence is presented that is likely to threaten the fairness of a trial, the presiding officer shall advise those present of the danger and shall seek the voluntary cooperation of the news media in delaying dissemination of potentially prejudicial information until the impaneling of the jury or until an earlier time consistent with the administration of justice.

(2) The defendant may move that all or part of the proceeding be closed to the public, or with the consent of the defendant, the judge may take action on the judge's own motion.

(3) The judge may close a preliminary hearing, bail hearing, or any other pretrial proceeding, including a hearing on a motion to suppress, and may seal the record only if:

(a) the dissemination of information from the pretrial proceeding and its record would create a clear and present danger to the fairness of the trial; and

(b) the prejudicial effect of the information on trial fairness cannot be avoided by any reasonable alternative means.

(4) Whenever all or part of any pretrial proceeding is held in chambers or otherwise closed to the public under this section, a complete record must be kept and made available to the public following the completion of the trial or earlier if consistent with trial fairness.

(5) Notwithstanding closure of a proceeding to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect either party's right to a fair trial or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the defendant's right to a fair trial.

~~(5)~~(6) When the judge determines that all or part of a document filed in support of a charge or warrant would present a clear and present danger to the defendant's right to a fair trial, the document or portion of the document must be sealed until the trial is completed unless the document or portion of the document must be used for trial fairness."

Section 6. Section 46-18-101, MCA, is amended to read:

"46-18-101. Correctional policy. (1) It is the purpose of this section to declare the correctional policy of the state of Montana. Laws for the punishment of crime and for the rehabilitation of the convicted are drawn to implement the policy established by this section.

(2) The correctional policy of the state of Montana is to protect society by preventing crime through punishment and rehabilitation of the convicted. The legislature finds that an individual is responsible for and must be held accountable for the individual's actions, including, whenever possible, the restoration of all pecuniary losses sustained by a victim of the offense. Corrections laws and programs must be implemented to impress upon each individual the responsibility for obeying the law. To achieve this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever probable cause exists and that punishment of the convicted is certain, timely, and consistent. Furthermore, it is the state's policy that persons convicted of a crime be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities. Finally, it is the policy of the state to recognize that the interests of crime victims should be considered so that, to the extent possible, victims of crime may be protected from threat of future harm by the offender.

(3) (a) Sentences imposed upon those convicted of crime must be based primarily on the following:

(i) the crime committed;

1 (ii) the prospects of rehabilitation of the offender;

2 (iii) the circumstances under which the crime was committed;

3 (iv) the criminal history of the offender; and

4 (v) consideration of alternatives to imprisonment of the offender in the state prison or the women's
5 correctional center.

6 (b) Dangerous offenders who habitually violate the law and victimize the public must be removed
7 from society and correctively treated in custody for long terms, as needed. Other offenders must be dealt
8 with by probation, suspended sentence, community corrections, community service, or fine whenever such
9 disposition appears practicable and not detrimental to the needs of public safety and the welfare of the
10 individual. Whenever possible, sentences for offenders must include restitution to the victim, payment of
11 costs as provided in 46-18-232, and payment of costs of court-appointed counsel as provided in 46-8-113.

12 (4) It is also the policy of the state that alternatives to imprisonment, such as community
13 corrections, should be used whenever appropriate for nonviolent felony offenders in order to provide them
14 opportunities to gain work experience, to learn life skills, to obtain education and training, or to participate
15 in other activities that will reduce recidivism and enable offenders to become productive members of
16 society."

17
18 **Section 7.** Section 46-18-112, MCA, is amended to read:

19 **"46-18-112. Content of presentence investigation report.** (1) Whenever an investigation is
20 required, the probation officer shall promptly inquire into and report upon:

21 (a) the defendant's characteristics, circumstances, needs, and potentialities;

22 (b) the defendant's criminal record and social history;

23 (c) the circumstances of the offense;

24 (d) the time of the defendant's detention for the offenses charged; ~~and~~

25 (e) the harm caused, as a result of the offense, to the victim, the victim's immediate family, and
26 the community; and

27 (f) the victim's pecuniary loss, if any. The officer shall make a reasonable effort to confer with the
28 victim to ascertain whether the victim has sustained a pecuniary loss. If the victim is not available or
29 declines to confer, the officer shall record that information in the report.

30 (2) All local and state mental and correctional institutions, courts, and law enforcement agencies

1 shall furnish, upon request of the officer preparing a presentence investigation, the defendant's criminal
2 record and other relevant information.

3 (3) The court may, in its discretion, require that the presentence investigation report include a
4 physical and mental examination of the defendant.

5 ~~(4) If applicable, the court may require the officer to inquire into the victim's pecuniary loss and~~
6 ~~make a restitution report to the court as provided by law."~~

7
8 **Section 8.** Section 46-18-113, MCA, is amended to read:

9 "46-18-113. Availability of presentence investigation report. (1) All presentence investigation
10 reports must be a part of the court record but may not be opened for public inspection. A copy of the
11 presentence investigation report must be provided to the prosecution, the defendant and the defendant's
12 attorney, and the agency or institution to which the defendant is committed. The prosecutor may discuss
13 the contents of the presentence report with a victim of the offense.

14 (2) The court having jurisdiction of the case may permit other access to the presentence
15 investigation report as it considers necessary."

16
17 **Section 9.** Section 46-18-115, MCA, is amended to read:

18 "46-18-115. Sentencing hearing. Before imposing sentence or making any other disposition upon
19 acceptance of a plea or upon a verdict or finding of guilty, the court shall conduct a sentencing hearing,
20 without unreasonable delay, as follows:

21 (1) The court shall afford the parties an opportunity to be heard on any matter relevant to the
22 disposition, including the applicability of sentencing enhancement provisions, mandatory minimum
23 sentences, persistent felony offender status, or an exception to these matters.

24 (2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided
25 by 46-18-301.

26 (3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address
27 the defendant personally to ascertain whether the defendant wishes to make a statement and to present
28 any information in mitigation of punishment or reason why the defendant should not be sentenced. If the
29 defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to
30 do so.

1 (4) (a) The court shall permit the victim to present a statement concerning the effects of the crime
2 on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated,
3 and the victim's opinion regarding appropriate sentence. At the victim's option, the victim may present
4 the statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or
5 both.

6 (b) The court shall give copies of any written statements of the victim to the prosecutor and the
7 defendant prior to imposing sentence.

8 (c) The court shall consider the victim's statement along with other factors. However, if the
9 victim's statement includes new material facts upon which the court intends to rely, the court shall allow
10 the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

11 ~~(4)(5)~~ The court shall impose sentence or make any other disposition authorized by law.

12 ~~(5)(6)~~ In felony cases, the court shall specifically state all reasons for the sentence, including
13 restrictions, conditions, or enhancements imposed, in open court on the record and in the written
14 judgment."

15
16 **Section 10.** Section 46-18-201, MCA, is amended to read:

17 **"46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of
18 an offense upon a verdict or a plea of guilty, the court may:

19 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
20 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
21 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.
22 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
23 period of the deferred imposition. Reasonable restrictions or conditions may include:

24 (i) jail base release;

25 (ii) jail time not exceeding 180 days;

26 (iii) conditions for probation;

27 ~~(iv) restitution;~~

28 ~~(iv)~~ (iv) payment of the costs of confinement;

29 ~~(v)~~ (v) payment of a fine as provided in 46-18-231;

30 ~~(vii)~~ (vi) payment of costs as provided in 46-18-232 and 46-18-233;

- 1 ~~(viii)~~(vii) payment of costs of court-appointed counsel as provided in 46-8-113;
- 2 ~~(ix)~~(viii) with the approval of the facility or program, order the offender to be placed in a community
- 3 corrections facility or program as provided in 53-30-321;
- 4 ~~(x)~~(ix) community service;
- 5 ~~(xi)~~(x) home arrest as provided in Title 46, chapter 18, part 10;
- 6 ~~(xii)~~(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection
- 7 of society; or
- 8 ~~(xiii)~~(xii) any combination of the above.
- 9 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
- 10 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
- 11 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
- 12 restrictions or conditions may include any of those listed in subsection (1)(a).
- 13 (c) impose a fine as provided by law for the offense;
- 14 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed
- 15 counsel as provided in 46-8-113;
- 16 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
- 17 the defendant to the department of corrections and human services for placement in an appropriate
- 18 correctional institution or program;
- 19 (f) with the approval of the facility or program, order the offender to be placed in a community
- 20 corrections facility or program as provided in 53-30-321; or
- 21 (g) impose any combination of subsections (1)(b) through (1)(f).
- 22 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim
- 23 of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim
- 24 as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay
- 25 restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.
- 26 ~~(2)~~(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be
- 27 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for
- 28 a felony, regardless of whether any other conditions are imposed.
- 29 ~~(3)~~(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the
- 30 court shall consider any elapsed time and either expressly allow part or all of it as a credit against the

1 sentence or reject all or part as a credit ~~and~~. The court shall state its reasons in the order. Credit,
2 however, must be allowed for jail or home arrest time already served.

3 ~~(4)(5)~~ Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2
4 years of a sentence of imprisonment imposed under the following sections may not be deferred or
5 suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2),
6 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

7 ~~(5)(6)~~ Except as provided in 46-18-222, the imposition or execution of the first 10 years of a
8 sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

9 ~~(6)(7)~~ Except as provided in 46-18-222, imposition of sentence in a felony case may not be
10 deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not
11 the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
12 suspended.

13 ~~(7)(8)~~ If the victim was less than 16 years old, the imposition or execution of the first 30 days of
14 a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be
15 deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

16 ~~(8)(9)~~ In imposing a sentence on a defendant convicted of a sexual offense as defined in
17 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and
18 Title 46, chapter 23, part 5.

19 ~~(9)(10)~~ A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
20 imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender
21 program.

22 ~~(10)(11)~~ In sentencing a nonviolent felony offender, the court shall first consider alternatives to
23 imprisonment of the offender in the state prison, including placement of the offender in a community
24 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
25 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
26 or the women's correctional center, the court shall state its reasons why alternatives to imprisonment were
27 not selected, based on the criteria contained in 46-18-225."

28
29 **Section 11.** Section 46-18-202, MCA, is amended to read:

30 **"46-18-202. Additional restrictions on sentence.** (1) The district court may also impose any of

1 the following restrictions or conditions on the sentence provided for in 46-18-201 that it considers
2 necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

- 3 (a) prohibition of the defendant's holding public office;
- 4 (b) prohibition of the defendant's owning or carrying a dangerous weapon;
- 5 (c) restrictions on the defendant's freedom of association;
- 6 (d) restrictions on the defendant's freedom of movement;
- 7 (e) any other limitation reasonably related to the objectives of rehabilitation and the protection of
8 the victim and society.

9 (2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term
10 exceeding 1 year, the court may also impose the restriction that the defendant ~~be~~ is ineligible for parole and
11 participation in the supervised release program while serving that term. If such a restriction is to be
12 imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary
13 for the protection of society, it shall impose the restriction as part of the sentence and the judgment ~~shall~~
14 must contain a statement of the reasons for the restriction.

15 (3) The judge in a justice's, city, or municipal court does not have the authority to restrict an
16 individual's rights as enumerated in subsection (1)(a).

17 (4) When the district court imposes a sentence of probation, as defined in 46-23-1001, any
18 probation agreement signed by the defendant may contain a clause waiving extradition."
19

20 **Section 12.** Section 46-18-222, MCA, is amended to read:

21 **"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition**
22 **and suspended execution of sentence.** All mandatory minimum sentences prescribed by the laws of this
23 state and the restrictions on deferred imposition and suspended execution of sentence prescribed by
24 46-18-201(4)(~~5~~) through (6)(~~7~~), 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

25 (1) the defendant was less than 18 years of age at the time of the commission of the offense for
26 which the defendant is to be sentenced;

27 (2) the defendant's mental capacity, at the time of the commission of the offense for which the
28 defendant is to be sentenced, was significantly impaired, although not so impaired as to constitute a
29 defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be
30 considered an impairment for the purposes of this subsection.

(3) the defendant, at the time of the commission of the offense for which the defendant is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3) and the court determines that treatment of the defendant in a local community affords a better opportunity for rehabilitation of the defendant and for the ultimate protection of the victim and society, in which case the court shall include in its judgment a statement of the reasons for its determination."

Section 13. Section 46-18-241, MCA, is amended to read:

"46-18-241. Condition of restitution. (1) As provided in 46-18-201, a sentencing court ~~may~~ shall require an offender to make restitution to any victim of the offense who has sustained pecuniary loss as a result of the offense.

(2) The court may require the offender to pay the cost of supervising the payment of restitution, as provided in 46-18-245, by paying an amount equal to 10% of the amount of restitution ordered, but not less than \$5 or more than \$250. Payment must be made to the court, which shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245.

(3) If the court finds that, because of circumstances beyond the offender's control, the offender is not and will not be able to pay any restitution during the period of state supervision, the court may order the offender to perform community service commensurate with the amount of restitution that would have been imposed."

Section 14. Section 46-18-242, MCA, is amended to read:

"46-18-242. Investigation and report of victim's loss. (1) Whenever the court believes that ~~restitution may be a proper condition of a deferred or suspended sentence~~ a victim of the offense may have sustained a pecuniary loss as a result of the offense or whenever the prosecuting attorney requests, the

1 court shall order the probation officer, restitution officer, or other designated person to include in the
2 presentence investigation and report:

- 3 (a) documentation of the offender's financial resources and future ability to pay restitution; and
4 (b) documentation of the victim's pecuniary loss, submitted by the victim or by the board of crime
5 control if compensation for the victim's loss has been reimbursed by the crime victims compensation and
6 assistance account.

7 (2) ~~Where no~~ When a presentence report is not authorized or requested, the court may receive
8 evidence of the offender's ability to pay and the victim's loss at the time of sentencing."
9

10 **Section 15.** Section 46-18-243, MCA, is amended to read:

11 **"46-18-243. ~~Definition~~ Definitions.** For purposes of 46-18-241 through 46-18-249, the following
12 definitions apply:

13 (1) "Pecuniary loss" means:

14 (a) all special damages, but not general damages, substantiated by evidence in the record, that a
15 person could recover against the offender in a civil action arising out of the facts or events constituting the
16 offender's criminal activities, including without limitation the money equivalent of loss resulting from
17 property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical
18 expenses, loss of income, expenses reasonably incurred in obtaining ordinary and necessary services that
19 the victim would have performed if not injured, expenses reasonably incurred in attending court proceedings
20 related to the commission of the offense, and reasonable expenses related to funeral and burial or
21 crematory services; and

22 (b) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in
23 the investigation and prosecution of the offense.

24 (2)(a) "Victim" means:

25 ~~(i)~~ (i) a person who suffers loss of property, bodily injury, or death as a result of:

26 ~~(ii)(A)~~ erminally injurious conduct the commission of an offense; or

27 ~~(iii)(B)~~ his the good faith effort to prevent erminally injurious conduct the commission of an offense;

28 or

29 (C) the good faith effort to apprehend a person reasonably suspected of committing an offense;

30 (ii) the estate of a deceased or incapacitated victim or a member of the immediate family of a

1 homicide victim;

2 (iii) a governmental entity that suffers loss of property as a result of the commission of an offense
3 in this state; or

4 (b)(iv) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim
5 of the offense for his pecuniary loss.

6 (b) Victim does not include a person who is accountable for the crime or accountable for a crime
7 arising from the same transaction."

8
9 **Section 16.** Section 46-18-244, MCA, is amended to read:

10 **"46-18-244. Type and time of payment -- defenses.** (1) The court shall specify the amount,
11 method, and time of payment to the victim and may permit payment in installments. The court may not
12 establish a payment schedule extending beyond the period ~~for which the sentence has been suspended or~~
13 ~~deferred under 46-18-201~~ of state supervision over the offender.

14 (2) In determining the amount, method, and time of payment, the court shall consider the financial
15 resources and future ability of the offender to pay. The court may provide for payment to a victim up to
16 but not in excess of the pecuniary loss caused by the offense. The offender may assert any defense that
17 ~~he the offender~~ could raise in a civil action for the loss sought to be compensated by the restitution order.

18 (3) In addition to other methods of payment, the court may order one or more of the following in
19 order to satisfy the offender's restitution obligation:

20 (a) forfeiture and sale of the offender's assets under the provisions of Title 25, chapter 13, part
21 7, unless the court finds, after notice and an opportunity for the offender to be heard, that the assets are
22 reasonably necessary for the offender to sustain a living or support the offender's dependents or unless the
23 state determines that the cost of forfeiture and sale would outweigh the amount available to the victim after
24 sale. If the proceeds of sale exceed the amount of restitution ordered and the costs of forfeiture and sale,
25 any remaining amount must be returned to the offender.

26 (b) return of any property to the victim;

27 (c) payment of up to one-third of the offender's prison earnings.

28 (4) With the consent of the victim and in the discretion of the court, an offender may be ordered
29 to make restitution in services in lieu of money or to make restitution to a person designated by the victim,
30 if that person provided services to the victim as a result of the offense."

1 **Section 17.** Section 46-18-245, MCA, is amended to read:

2 **"46-18-245. Supervision of payment.** The court may order a probation officer, restitution officer,
3 officer of the board of crime control, or other designated person to supervise the making of restitution and
4 to report to the court any default in payment."
5

6 **Section 18.** Section 46-18-246, MCA, is amended to read:

7 **"46-18-246. Waiver or modification of payment.** An offender may at any time petition the
8 sentencing court to adjust or otherwise waive payment of any part of any ordered restitution. The court
9 shall schedule a hearing and give a victim to whom restitution was ordered notice of the hearing date,
10 place, and time and inform the victim that ~~he~~ the victim will have an opportunity to be heard. If the court
11 finds that the circumstances upon which it based the imposition, amount, method, or time of payment no
12 longer exist or that it otherwise would be unjust to require payment as imposed, the court may adjust or
13 waive unpaid restitution or modify the time or method of making restitution. The court may extend the
14 restitution schedule, but not beyond the period ~~for which the sentence has been suspended or deferred~~
15 ~~under 46-18-201~~ provided for in 46-18-244."
16

17 **Section 19.** Section 46-18-247, MCA, is amended to read:

18 **"46-18-247. Default.** (1) If an offender sentenced to make restitution is in default, the sentencing
19 court, upon the motion of the prosecuting attorney or upon its own motion, may issue an order under
20 46-18-203 requiring the offender to show cause why ~~he~~ the offender should not be confined for failure to
21 obey the sentence of the court. The court may order the offender to appear at a time, date, and place for
22 a hearing or, if ~~he~~ the offender fails to appear as ordered, issue a warrant for ~~his~~ the offender's arrest. The
23 order or warrant must be accompanied by written notice of the offender's right to a hearing as provided
24 in 46-18-203.

25 (2) If the court finds that the offender's default was attributable to a the offender's failure ~~on his~~
26 ~~part~~ to make a good faith effort to obtain the necessary funds for payment of the ordered restitution, the
27 court may take any action provided for in 46-18-203. If confinement is ordered, the court, after entering
28 the order, may ~~at any time, for good cause shown,~~ reduce the term of confinement and, in accordance with
29 the provisions of 46-18-246, waive satisfaction of the restitution order.

30 (3) An order to pay restitution constitutes a judgment rendered in favor of the state, and following

1 a default in the payment of restitution or any installment ~~thereof~~ of restitution, the sentencing court may
2 order the restitution to be collected by any method authorized for the enforcement of other judgments."

3
4 **NEW SECTION.** Section 20. Allocation of fines, costs, restitution, and other charges. (1) If an
5 offender is subjected to any combination of fines, costs, restitution, charges, or other payments arising out
6 of the same criminal proceeding, money collected from the offender must be allocated as provided in this
7 section.

8 (2) Except as otherwise provided in this section, if a defendant is subject to payment of restitution
9 and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, 50%
10 of all money collected from the defendant must be applied to payment of restitution and the balance must
11 be applied to other payments in the following order:

- 12 (a) payment of charges imposed pursuant to 46-18-236;
13 (b) payment of costs imposed pursuant to 46-18-232 or 46-18-233;
14 (c) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and
15 (d) any other payments ordered by the court.

16 (3) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has
17 been paid, any additional money collected must be applied to payment of those fines, costs, charges, or
18 other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments
19 have been paid, any additional money collected must be applied toward payment of the restitution.

20
21 **Section 21.** Section 46-18-302, MCA, is amended to read:

22 **"46-18-302. Evidence that may be received.** In the sentencing hearing, evidence may be presented
23 as to any matter the court considers relevant to the sentence, including but not limited to the nature and
24 circumstances of the crime; the defendant's character, background, history, and mental and physical
25 condition; the harm caused to the victim and the victim's family as a result of the offense; and any other
26 facts in aggravation or mitigation of the penalty. Any evidence that the court considers to have probative
27 force may be received regardless of its admissibility under the rules governing admission of evidence at
28 criminal trials. Evidence admitted at the trial relating to such aggravating or mitigating circumstances ~~shall~~
29 must be considered without reintroducing it at the sentencing proceeding. The state and the defendant or
30 ~~his~~ the defendant's counsel ~~shall~~ must be permitted to present argument for or against sentence of death."

1 **Section 22.** Section 46-23-202, MCA, is amended to read:

2 **"46-23-202. Investigation of prisoner by board -- consideration of victim's statement.** (1) Within
3 the 2 months prior to a prisoner's official parole eligibility date or within the 2 months following the date
4 on which a prisoner becomes eligible pursuant to 53-30-105(5), the board shall consider all pertinent
5 information regarding each prisoner, including the circumstances of the offense₇; the prisoner's previous
6 social history and criminal record₇; the prisoner's conduct, employment, and attitude in prison₇; and the
7 reports of any physical and mental examinations that have been made.

8 (2) Before ordering the parole of any prisoner, the board shall:

9 (a) conduct a hearing and interview the prisoner. At the time of the hearing, the board shall receive
10 relevant statements from interested persons and any person may be represented by counsel, provided that
11 the board has the power to regulate procedures at all hearings.

12 (b) permit a victim to present a statement concerning the effects of the crime on the victim, the
13 circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's
14 opinion regarding whether the prisoner should be paroled. In the board's discretion, the victim's statement
15 may be kept confidential. The board shall consider the victim's statement, along with the information
16 provided under subsection (1), in determining whether to grant parole."

17
18 **Section 23.** Section 46-23-210, MCA, is amended to read:

19 **"46-23-210. Medical parole.** (1) The board may release on medical parole by appropriate order
20 a person placed in a correctional institution or program, except a person under sentence of death. To be
21 eligible for a medical parole, a person must have an examination and written diagnosis by a physician
22 licensed under Title 37 to practice medicine. The diagnosis must include:

23 (a) a determination that the person suffers from an incapacitating physical condition, disease, or
24 syndrome that renders the person highly unlikely to present a clear and present danger to public safety;

25 (b) a description of the physical condition, disease, or syndrome and a detailed description of the
26 person's physical incapacity; and

27 (c) a prognosis addressing the likelihood of the person's recovery from the physical condition,
28 disease, or syndrome and the extent of any potential recovery.

29 (2) The diagnosis must be reviewed and accepted by the department before the board may consider
30 granting a medical parole.

(3) The board shall require as a condition of medical parole that the person agree to placement in an environment chosen by the department during the parole period, including but not limited to a hospital, nursing home, or family home. The board may require as a condition of parole that the person agree to periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the person's physical capacity has improved to the extent that the person is likely to pose a possible detriment to society, the board may revoke the parole and return the person to the custody of the department.

(4) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's parent, grandparent, child, or sibling by submitting the request in writing to the administrator of the correctional institution in which the person is incarcerated.

(5) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

(6) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply to nonmedical parole."

Section 24. Section 46-23-215, MCA, is amended to read:

"46-23-215. Conditions of parole. (1) ~~Every~~ A prisoner while on parole ~~shall remain~~ remains in the legal custody of the institution from which ~~he~~ the prisoner was released but ~~shall be~~ is subject to the orders of the board.

(2) When an order for parole is issued, it ~~shall~~ must recite the conditions ~~thereof~~ of parole. If restitution was imposed as part of the sentence under 46-18-201, the order of parole must contain a condition to pay restitution to the victim. An order for parole or any parole agreement signed by a prisoner may contain a clause waiving extradition.

(3) Whenever a prisoner in the Montana state prison has been approved for parole on condition that ~~he~~ the prisoner obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the warden may grant ~~him~~ the prisoner a furlough, not to exceed 10 days, for purposes of fulfilling the condition. While on ~~such~~ furlough, the prisoner remains in the legal custody of the prison and is subject to all other conditions recited by the board."

Section 25. Section 46-23-405, MCA, is amended to read:

1 **"46-23-405. Establishing program -- rules.** The department ~~is authorized and directed to~~ shall
2 establish a supervised release program and make rules in accordance with Title 2, chapter 4 (the Montana
3 Administrative Procedure Act), to implement and control the ~~same~~ program. Rules ~~shall~~ must include
4 guidelines for:

- 5 (1) prisoner eligibility;
- 6 (2) prisoner participation in a recognized educational, treatment, or training program or work
7 program in conjunction with any of the ~~above~~ programs listed in this subsection;
- 8 (3) approval of the sponsor;
- 9 (4) review of a board decision to deny an applicant admittance into the program;
- 10 (5) supervision of the prisoner by or under the direction of a supervising agent while ~~he~~ the prisoner
11 is in the program;
- 12 (6) implementation of a plan for the prisoner to satisfy any restitution or community service
13 obligation imposed as part of the prisoner's sentence under 46-18-201;
- 14 ~~(6)(7)~~ conducting revocation hearings;
- 15 ~~(7)(8)~~ establishment of a program by the prisoner; and
- 16 ~~(8)(9)~~ any other provisions necessary to implement this part."

17
18 **Section 26.** Section 46-23-1011, MCA, is amended to read:

19 **"46-23-1011. Supervision on probation.** (1) The department shall supervise persons during their
20 probation period in accord with the conditions set by a court.

21 (2) A copy of the conditions of probation must be signed by the probationer and given to the
22 probationer and the probationer's probation and parole officer, who shall report on the probationer's
23 progress under rules of the court.

24 (3) The probation and parole officer shall regularly advise and consult with the probationer to
25 encourage the probationer to improve the probationer's condition and conduct and shall inform the
26 probationer of the restoration of rights on successful completion of the sentence.

27 (4) The probation and parole officer may recommend and a court may modify any condition of
28 probation or suspension of sentence at any time. Notice must be given to the probation and parole officer
29 before any condition is modified, and the officer must be given an opportunity to present the officer's ideas
30 or recommendations on any modification. A copy of a modification of conditions must be delivered to the

1 probation and parole officer and the probationer. Waiver or modification of restitution may be ordered only
2 as provided under the provisions of 46-18-246.

3 (5) The probation and parole officer shall keep records as the department or the court may require.

4 (6) (a) Upon recommendation of the probation and parole officer, a court may conditionally
5 discharge a probationer from supervision before expiration of the probationer's sentence if the court
6 determines that a conditional discharge from supervision is in the best interests of the probationer and
7 society and will not present unreasonable risk of danger to the victim of the offense.

8 (b) Subsection (6)(a) does not prohibit a court from revoking the order suspending execution or
9 deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally
10 discharged from supervision.

11 (c) If the department certifies to the court that the workload of a district probation and parole office
12 has exceeded the optimum workload for the district over the preceding 60 days, the court may not place
13 an offender on probation under supervision by that district office unless it grants a conditional discharge
14 to a probationer being supervised by that district office. The department may recommend probationers to
15 the court for conditional discharge. The court may accept or reject the recommendations of the
16 department. The department shall determine the optimum workload for each district probation and parole
17 office."

18
19 **Section 27.** Section 46-23-1021, MCA, is amended to read:

20 **"46-23-1021. Supervision on parole.** (1) The department shall retain custody of all persons placed
21 on parole and shall supervise the persons during their parole ~~period~~ periods in ~~accord~~ accordance with the
22 conditions set by the board.

23 (2) The department shall assign personnel to assist ~~persons~~ a person who is eligible for parole in
24 preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board
25 prior to its consideration of the case of the eligible person.

26 (3) A copy of the conditions of parole must be signed by the parolee and given to the parolee and
27 to the parolee's probation and parole officer, who shall report on the parolee's progress under the rules of
28 the board.

29 (4) The probation and parole officer shall regularly advise and consult with the parolee, assist the
30 parolee in adjusting to community life, and inform the parolee of the restoration of rights on successful

1 completion of the sentence.

2 (5) The probation and parole officer shall keep records as the board or department may require.
3 All records must be entered in the master file of the individual.

4 (6) (a) Upon recommendation of the probation and parole officer, the board may conditionally
5 discharge a parolee from supervision before expiration of the parolee's sentence if the board determines
6 that a conditional discharge from supervision is in the best interests of the parolee and society and will not
7 present unreasonable risk of danger to the victim of the offense.

8 (b) Subsection (6)(a) does not prohibit the board from revoking the parole, as provided in
9 46-23-1025, of a parolee who has been conditionally discharged from supervision.

10 (c) If the department certifies to the board that the workload of a district probation and parole
11 office has exceeded the optimum workload for the district over the preceding 60 days, the board may not
12 parole a prisoner to that district office unless it grants a conditional discharge to a parolee being supervised
13 by that district office. The department may recommend parolees to the board for conditional discharge.
14 The board may accept or reject the recommendations of the department. The department shall determine
15 the optimum workload for each district probation and parole office."
16

17 **Section 28.** Section 46-23-1025, MCA, is amended to read:

18 **"46-23-1025. Report to and action by the board.** (1) If the hearings officer determines that there
19 is probable cause to believe that the prisoner has violated a condition of his parole, the probation and parole
20 officer shall immediately notify the board and shall submit in writing a report showing in what manner the
21 prisoner has violated the conditions of release. This report ~~shall~~ must be accompanied by the findings of
22 the hearings officer.

23 (2) ~~Thereupon~~ Upon receipt of a report, the board shall cause the prisoner to be promptly brought
24 before it for a hearing on the violation charged under ~~such~~ rules as that the board may adopt. If the
25 violation is established, the board may continue or revoke the parole or conditional release or may enter
26 ~~such other an~~ order as it ~~may see~~ sees fit.

27 (3) If the prisoner has violated a condition of release requiring the payment of restitution, the board
28 shall notify the victim of the offense prior to the hearing required by subsection (2) and give the victim an
29 opportunity to be heard. If the board finds that due to circumstances beyond the prisoner's control, the
30 prisoner is unable to make the required restitution payments, the board may not revoke the prisoner's parole

for failure to pay restitution. The board may modify the time or method of making restitution and may extend the restitution schedule, but the schedule may not be extended beyond the period of state supervision over the prisoner.

(3)(4) If it appears that he the prisoner has violated the provisions of his release, the board shall determine whether the time from the issuing of the warrant to the date of his the prisoner's arrest or any part of it will be counted as time served under the sentence."

Section 29. Section 46-24-103, MCA, is amended to read:

"46-24-103. **Duty of attorney general.** The attorney general shall assure ensure that victims and witnesses of crime receive fair and proper treatment in the criminal justice system. The attorney general shall prepare a written notice of the rights and services available to victims of crime under this chapter. The notice must be distributed to local law enforcement agencies in the state. In addition, the attorney general shall assure ensure that victims and witnesses are provided important services and assistance as required under this chapter."

Section 30. Section 46-24-104, MCA, is amended to read:

"46-24-104. **Consultation with victim of felony offense certain offenses.** The As soon as possible prior to disposition of the case, the prosecuting attorney in a criminal case shall consult with the victim of a felony offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the victim or, in the case of a minor child victim or homicide victim, with the family of the victim in order to obtain the views of the victim or his the victim's family regarding the disposition of the case, including:

- (1) dismissal of the case;
- (2) release of the accused pending judicial proceedings;
- (3) plea negotiations; and
- (4) pretrial diversion of the case from the judicial process."

Section 31. Section 46-24-201, MCA, is amended to read:

"46-24-201. **Services to victims of crime.** (1) Law enforcement personnel shall assure ensure that a victim of a crime receives emergency social and medical services as soon as possible and that such the victim is given information on written notice, in the form supplied by the attorney general, of the following:

1 ~~(1)(a)~~ the availability of crime victim compensation;
2 ~~(2) community-based victim treatment programs;~~
3 **(b) access by the victim and the defendant to information about the case;**
4 ~~(3)(c)~~ the role of the victim in the criminal justice process, including what ~~he~~ the victim can expect
5 from the system, as well as what the system expects from the victim; and
6 ~~(4)(d)~~ stages in the criminal justice process of significance to a crime victim and the manner in
7 which information about ~~such~~ the stages may be obtained.

8 **(2) In addition to the information supplied under subsection (1), law enforcement personnel shall**
9 **provide the victim with written information on community-based victim treatment programs, including**
10 **medical, housing, counseling, and emergency services available in the community.**

11 **(3) As soon as possible, law enforcement personnel shall give to the victim the following**
12 **information:**

13 **(a) the name, office address, and telephone number of a law enforcement officer assigned to**
14 **investigate the case; and**

15 **(b) the prosecuting attorney's name, office address, and telephone number."**
16

17 **Section 32.** Section 46-24-202, MCA, is amended to read:

18 **"46-24-202. Notification of available protective services.** Law enforcement officers and
19 prosecuting attorneys shall provide a victim or witness information on the availability of services to protect
20 the victim or witness from intimidation, including the process for obtaining a protective order from the
21 court."
22

23 **Section 33.** Section 46-24-203, MCA, is amended to read:

24 **"46-24-203. Prompt notification to victims and witnesses of felony certain offenses.** (1) A person
25 described in subsection (2) who provides the appropriate official with a current address and telephone
26 number must receive prompt advance notification, if possible, of proceedings relating to ~~his~~ the person's
27 case, including:

28 **(a) the arrest of an accused;**

29 **(b) the release of the accused pending judicial proceedings; and**

30 **(c) the crime with which the accused has been charged, including an explanation of the elements**

1 of the offense when necessary to an understanding of the nature of the crime;

2 ~~(e)(d)~~ proceedings in the prosecution of the accused, including entry of a plea of guilty, and the
3 setting of a trial date, the sentencing schedule, the sentence imposed, the term of imprisonment, if
4 imposed, and the release of the accused from imprisonment;

5 (e) if the accused is convicted or pleads guilty, the function of a presentence report; the name,
6 office address, and telephone number of the person preparing the report; and the convicted person's right
7 of access to the report, as well as the victim's right under 46-18-115 to present a statement in writing or
8 orally at the sentencing proceeding and the convicted person's right to be present at the sentencing
9 proceeding and to have access to the victim's statement;

10 (f) the date, time, and place of any sentencing hearing, the sentence imposed, and the term of
11 imprisonment, if imposed; and

12 (g) the right under [section 36] of a victim of a felony offense to receive information from the
13 department of corrections and human services concerning the convicted person's incarceration.

14 (2) A person entitled to notification under subsection (1) must be a victim or witness of a felony
15 offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the victim, a
16 relative of such a victim or witness who is a minor, or a relative of a homicide victim."

17
18 Section 34. Section 46-24-205, MCA, is amended to read:

19 "46-24-205. Notification to employer or creditor -- limitations on employer. (1) The law
20 enforcement agency or prosecuting attorney in a criminal case shall assist a victim or witness who requests
21 assistance in informing an employer that the need for victim and witness cooperation in the prosecution
22 of the case may necessitate absence of the victim or witness from ~~his~~ the place of employment.

23 (2) A law enforcement agency or prosecuting attorney shall assist a victim or witness who, as a
24 direct result of a crime or because of cooperation with the law enforcement agency or prosecuting attorney,
25 is subjected to serious financial strain. ~~Such~~ The agency or prosecuting attorney shall assist the victim or
26 witness by explaining to creditors the reason for ~~such~~ the serious financial strain.

27 (3) An employer may not discharge or discipline a victim or a member of the victim's family for
28 participation at the prosecuting attorney's request in preparation for or attendance at a criminal justice
29 proceeding.

30 (4) As used in this section, "member of the victim's family" means the victim's spouse, child by

1 birth or adoption, stepchild, parent, stepparent, or sibling, but does not include a person who is accountable
2 for the crime or accountable for a crime arising from the same transaction."

3
4 **NEW SECTION. Section 35. Information concerning appeal or postconviction remedies.** If the
5 defendant appeals or pursues a postconviction remedy, the attorney general, or the county attorney if the
6 case has not been referred to the attorney general, shall promptly inform the victim of the notice of appeal
7 or postconviction petition, of the date, time, and place of any hearing, and of the decision.

8
9 **NEW SECTION. Section 36. Information concerning confinement.** Upon request of a victim of a
10 felony offense, the department of corrections and human services or the board of pardons, as applicable,
11 shall:

12 (1) promptly inform the victim of the estimated date of the prisoner's release from confinement in
13 the Montana state prison, if reasonably ascertainable;

14 (2) promptly inform the victim of the time and place of a parole hearing concerning the prisoner
15 and of the victim's right to submit a statement to the board of pardons under 46-23-202;

16 (3) provide reasonable advance notice to the victim before release of the defendant on furlough
17 or to a work-release program, half-way house, or other community-based program or correctional facility;
18 and

19 (4) promptly inform the victim of the occurrence of any of the following events concerning the
20 prisoner:

21 (a) an escape from a correctional or mental health facility or community program;

22 (b) a recapture;

23 (c) a decision of the board of pardons;

24 (d) a decision of the governor to commute the sentence or to grant executive clemency;

25 (e) a release from confinement and any conditions attached to the release; and

26 (f) the prisoner's death.

27
28 **NEW SECTION. Section 37. General requirements for information.** (1) Unless specifically stated
29 otherwise, the requirements of 44-2-601, 46-24-104, 46-24-201 through 46-24-203, [section 35], and
30 [section 36] to provide information to the victim may be satisfied by either written or oral communication

1 with the victim or the victim's designee.

2 (2) The person responsible for providing information required by 44-2-601, 46-24-104, 46-24-201
3 through 46-24-203, [section 35], and [section 36] shall promptly inform the victim of significant changes
4 in the information.

5 (3) The obligation to furnish information to a victim under 44-2-601, 46-24-104, 46-24-201
6 through 46-24-203, [section 35], and [section 36] is conditioned upon the victim informing the appropriate
7 agency in writing of the name, address, and telephone number of the person to whom the information
8 should be provided and of any change of name, address, or telephone number.

9
10 **Section 38.** Section 53-9-128, MCA, is amended to read:

11 **"53-9-128. Compensation benefits.** (1) A claimant is entitled to weekly compensation benefits
12 when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct.
13 During the time the claimant seeks ~~such~~ weekly benefits, the claimant, as a result of ~~such~~ the injury, must
14 have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit
15 amount is 66 2/3% of the wages received at the time of the criminally injurious conduct, subject to a
16 maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly
17 compensation payments ~~shall~~ must be made at the end of each 2-week period. ~~No weekly~~ Weekly
18 compensation payments may not be paid for the first week after the criminally injurious conduct occurred,
19 but if total actual loss of wages continues for 1 week, weekly compensation payments ~~shall~~ must be paid
20 from the date the wage loss began. Weekly compensation payments ~~shall~~ must continue until the claimant
21 has a reasonable prospect of being regularly employed in the normal labor market.

22 (2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon,
23 reasonable hospital services and medicines, and ~~such~~ other treatment ~~as may be~~ approved by the division
24 for the injuries suffered due to criminally injurious conduct.

25 (3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are
26 entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66
27 2/3% of the wages received at the time of the criminally injurious conduct causing the death, subject to
28 a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly
29 compensation payments ~~shall~~ must be made at the end of each 2-week period.

30 (b) Benefits under subsection (3)(a) ~~of this section shall~~ must be paid to the spouse for the benefit

1 of the spouse and other dependents unless the division determines that other payment arrangements should
2 be made. If a spouse dies or remarries, benefits under subsection (3)(a) ~~shall~~ must cease to be paid to the
3 spouse but ~~shall~~ must continue to be paid to the other dependents ~~so~~ as long as their dependent status
4 continues.

5 (4) Reasonable funeral and burial expenses of the victim, not exceeding ~~\$2,000~~ \$3,500, ~~shall~~ must
6 be paid if all other collateral sources have properly paid ~~such~~ expenses but have not covered all ~~such~~
7 expenses.

8 (5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's
9 death because of injuries suffered due to an act of criminally injurious conduct may not exceed \$25,000
10 in the aggregate.

11 (6) Compensation benefits are not payable for pain and suffering, inconvenience, physical
12 impairment, or nonbodily damage.

13 (7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result
14 of ~~such~~ the injury has no reasonable prospect of being regularly employed in the normal labor market, and
15 who was employable but was not employed at the time of ~~such~~ the injury, may in the discretion of the
16 division be awarded weekly compensation benefits in an amount determined by the division not to exceed
17 \$100 per week. Weekly compensation payments ~~shall~~ must continue until the claimant has a reasonable
18 prospect of being regularly employed in the normal labor market or for a shorter period as determined by
19 the division. The claimant ~~shall~~ must be awarded benefits as provided in subsection (2) ~~of this section~~.

20 (b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was
21 employable but not employed at the time of death may in the discretion of the division be awarded, in a
22 gross single amount payable to all dependents, a sum not to exceed \$100 per week, which ~~shall be~~ is
23 payable in the manner and for the period provided by subsection (3)(b) ~~of this section~~ or for ~~such~~ a shorter
24 period as determined by the division. The claimant ~~shall~~ must be awarded benefits as provided in
25 subsection (4) ~~of this section~~.

26 (8) Amounts payable as weekly compensation may not be commuted to a lump sum and may not
27 be paid less frequently than every 2 weeks.

28 (9) (a) Subject to the limitations in subsection (9)(c), the spouse, parent, child, brother, or sister
29 of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental
30 health treatment received as a result of the victim's death.

(b) Subject to the limitations in subsection (9)(c), the parent, brother, or sister of a minor who is a victim of a sexual crime ~~for which a person has been charged~~ and who is not entitled to receive services under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a result of the crime.

(c) Total payments made under subsections (9)(a) and (9)(b) may not exceed ~~\$500~~ \$2,000 or 12 consecutive months of treatment for each person ~~or \$1,500 for a family, whichever occurs first.~~"

NEW SECTION. Section 39. Repealer. Section 46-23-204, MCA, is repealed.

NEW SECTION. Section 40. Codification instruction. (1) [Section 3] is intended to be codified as an integral part of Title 44, chapter 5, part 3, and the provisions of Title 44, chapter 5, part 3, apply to [section 3].

(2) [Section 20] is intended to be codified as an integral part of Title 46, chapter 18, part 2, and the provisions of Title 46, chapter 18, part 2, apply to [section 20].

(3) [Sections 35 through 37] are intended to be codified as an integral part of Title 46, chapter 24, part 2, and the provisions of Title 46, chapter 24, part 2, apply to [sections 35 through 37].

NEW SECTION. Section 41. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 42. Applicability. [Sections 10, 13, and 21] apply to trials for and sentences imposed for crimes that were committed on or after [the effective date of this act].

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0069, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill generally revising the laws relating to the protection and treatment of victims of crime and to the payment of restitution by the offender.

ASSUMPTIONS:

Crime Control Division:

1. An officer/employee of the Board of Crime Control will not be required to perform actual restitution collection duties.
2. An officer/employee of the Board of Crime Control will coordinate information with the courts and assist with restitution case management for offenders whose victims have received benefits from the Crime Victims Compensation Account administered by the Board of Crime Control.
3. The caseload for restitution offenders for which the Board of Crime Control will be assisting is estimated at 126 for FY96, 250 for FY97, and over 350 by FY98.
4. The estimated additional FTE required by the Crime Control Division to assist with case management is 0.50 FTE for FY96 and 1.00 FTE for FY97. The FTE is part of a new proposal in the Governor's Executive Budget. Associated operating expenses, also in the Executive Budget, will increase by \$8,000 in FY96 and \$12,000 in FY97.
5. The estimated increase in victim compensation payments as a result of increased burial expenses is \$20,000 per year, as recommended in the Executive Budget.
6. The estimated increase in victim compensation payments for secondary mental health counseling is \$30,000 per year, as recommended in the Executive Budget.
7. Funding for the increased expenditures is from the crime victim compensation state special revenue account and total \$74,700 in FY96 and \$94,420 in FY97.
8. The amount of restitution ordered by the courts will increase as a result of this bill, but there is inadequate information at this time to provide a reasonable estimate.

Department of Corrections and Human Services (DCHS):

9. The Probation and Parole Bureau writes approximately 1,500 pre-sentence reports per year. These reports include a victim impact statement.
10. Established community service programs are limited in the State of Montana.
11. There may be a significant fiscal impact to community service programs if restitution can be substituted for community services and the department is responsible for supervision. Additional impact would stem primarily from increased costs of providing workers' compensation insurance, which are not subject to reasonable estimation.
12. There will be no fiscal impact to the Parole Board.

FISCAL IMPACT:

None other than as included in the Executive Budget.

TECHNICAL NOTES:

Page 20, line 27 requires the Board of Pardons to notify the victim of the offense prior to the hearing for a violation of a condition of release requiring restitution. Consideration may be given to changing the requirement to the "hearings officer" to encourage victim testimony and to make it easier for victims to testify at preliminary hearings, rather than travel to Deer Lodge.

Dave Lewis 1-10-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

MARJORIE FISHER, PRIMARY SPONSOR DATE

Fiscal Note for HB0069, as introduced

HB 69

{Tape: 1; Side: A}

HEARING ON HB 69

Opening Statement by Sponsor:

REP. MARJORIE FISHER, HD 80, introduced HB 69 which includes in its intent the notification of victims of crime of an escape or release of an offender; and if it doesn't jeopardize a pending investigation, it deals with the release of information about the case. It is also intends to cover restitution to a victim as well as to provide protection from future harm.

Proponents' Testimony:

Joe Mazurek, Attorney General, said that while there is agreement that crime victims should be an integral part of the criminal justice system, they are often overlooked in the technicalities and procedures of the criminal process. He outlined the various incidents and history of working with the current law which have contributed to the drafting of HB 69 which seeks to remedy the problems. He distributed EXHIBIT 1 which explained the Department of Justice position on this bill. He pointed out that the Attorney General is directed to assume initial duties under this statute and is prepared to do so within current resources.

He presented proposed amendments prepared by Beth Baker to the committee and discussed the concepts of the amendments. EXHIBIT 2

Gene Kiser, Montana Board of Crime Control (MBCC), submitted his testimony in support of HB 69. He outlined MBCC's administrative responsibilities with the passage of HB 69. EXHIBIT 3

{Tape: 1; Side: A; Approx. Counter: 16.7.}

John Connor, Montana County Attorney's Association, appeared in support of HB 69. He reviewed this bill while it was being drafted to offer perspectives from the standpoint of a criminal prosecutor which relate to protecting the integrity of the case. He believes there are adequate protections provided in the bill to maintain the integrity of a case being prosecuted.

Dave Ohler, Legal Counsel, Department of Corrections and Human Services (DCHS), spoke as a proponent representing DCHS. While DCHS recognizes there a number of responsibilities added to the department by this bill, it is willing and able to assume those responsibilities.

Suzanne Hall spoke in favor of HB 69. She is a victim of a crime committed in Gallatin County. She gave a background of her experience as a crime victim and her frustration and fear in dealing unsuccessfully with the legal system while she was being harassed and threatened by another person. She felt that it

ultimately was her knowledge of the law and subsequent pressure brought to bear on the legal system that changed the circumstances and prosecution of her case. She felt there should be an advocate within the system for crime victims. She felt that essential elements to this legislation are the notification of a defendant's release from jail including the timing of such release, keeping victim information confidential from the defendant, and the victim having access to some information about the defendant and the proceedings as well as the reasons for some requirements (such as blood samples for DNA testing) of the victims. She felt that the Attorney General should also provide information about rights and services for crime victims just as defendants are informed of their rights. She wanted a victim impact statement at the time of sentencing and that this time be restricted from final questioning of the victim. She felt that misdemeanor crimes should be covered under this statute.

Pari LeCoure, President, Missoula Neighborhood Network, stated that she was a victim of crime. She described the circumstances of two crimes which involved her as a family member. She also discussed the emotional and economic impact of crimes on a family. She presented EXHIBITS 4 - 7 as further testimony.

{Tape: 1; Side: A; Approx. Counter: 38.6}

Marion Stevenson presented testimony of her experience as a victim of crime in Hobson, Montana, in support of HB 69.
EXHIBIT 8

Matthew Dale, Executive Director, Friendship Center, Helena, Montana, shared the increase in numbers of battered women and their children served by the Friendship Center in the past year. He said that the Center believes this is a good bill because it attempts to replace the secret and tightly controlled environment a victim had been living in with a more open communication and sharing of information with the victim. He said that "knowledge is power" and they want to provide the victim all the power possible. An additional welcomed change is the expansion of the Victim Assistance Program provided under this bill.

David Hemion, Mental Health Association, spoke in support of HB 69, specifically that portion of the bill which improves coverage for mental health counseling and therapy.

Opponents' Testimony:

None.

Informational Testimony:

EXHIBITS 9, 10, and 11 are submitted as informational testimony.

Questions From Committee Members and Responses:

REP. BRAD MOLNAR asked if filing bankruptcy would discharge a restitution order.

Mr. Mazurek said that he believed it would, but he would like to look that up specifically and get the answer to the committee.

REP. MOLNAR said that these were not juveniles, but they would be attempting to allow them to discharge restitution orders through community service which would not retribute the victim. He asked if it would make sense to strike community service from the bill since with this amendment there would be a lifetime to collect.

Mr. Mazurek said that the reason for that option is that the court will always be required to look at the person's ability to pay. He said the 1991 legislature added an amendment which provided that victim's provisions also applies to juveniles.

REP. MOLNAR gave the example of a person who completed their time of imprisonment and community service following release and then wins the lottery. He asked if the victim could come back on that.

Mr. Mazurek said that the court would have to take that into account and that is something which can be considered. Under the bill it is required to be considered at the time of probation or parole. The court would have to find that there is no possibility that this person has the capability of earning money at any time in their lifetime before it would absolutely rule out restitution. This bill requires restitution and for the court to consider the ability to pay now or in the future.

REP. MOLNAR asked if the bill is enforceable if the criminal moves out of state.

Mr. Mazurek said, "Yes, in this respect; any sentencing order or an order of restitution which the effect of a judgment is entitled to full faith and credit beyond the boundaries of this state."

REP. DEB KOTTEL directed the committee's and sponsor's attention to page 23 of the bill, line 3, section 31 (46-24-201) and wondered what the intent was in including the defendant in that line regarding information about the case since this section deals with services to the victim. She asked if the defendant would have the right to ask about any records of treatment, for instance, or other confidential information.

Beth Baker, Staff Attorney, Department of Justice, said that this section is about information that the Attorney General is going to give to the victim. It requires that the Attorney General advise the victim of what information the defendant is going to get during the case as well. The defendant will receive witness

statements. Regarding the bankruptcy issue, she cited a case in 1986, Kelly vs Robinson decided by the U. S. Supreme Court, which held that in a Chapter 7 bankruptcy, restitution was not a dischargeable debt, because of a provision in the bankruptcy code.

REP. KOTTEL cited 46-24-201 (1), MCA, which ensures that a victim of crime receives emergency social benefits, and asked if that provision would be carried out at the expense of the state and if the county does not have those types of services, what obligation that would put on law enforcement to provide them.

Ms. Baker replied that the only change being made in current law is editorial and that section refers only to emergency medical services requiring law enforcement to get them to a hospital. She did not think that it obligated the state to pay their expenses other than what they might be entitled to under the Victims Compensation Program.

REP. KOTTEL pointed out that the bill uses the word, "accountable" on page 13, lines 6 and 7, and also on page 24. She wanted to know if this was being used in a criminally accountable sense or a broader sense of civil accountability.

Ms. Baker explained the definition of accountability in title 45 is criminal as it is defined under 45-1-301, MCA.

REP. KOTTEL discussed the extent of determination of compensatory damages in terms of values of intangible issues and wondered if the intent was to only consider out-of-pocket damages, where the limits were.

Ms. Baker answered that what is included in the law in regard to restitution is addressed in section 15 of the bill on page 12. It gets confusing since principles of criminal and civil law are being mixed. She went on to explain this section. The bill seeks to guard against the restitution hearing turning into a full civil trial. Therefore, loss is limited to special and not general damages and those damages are clarified in this section.

REP. KOTTEL said that she noticed that included in the bill is the right for insurance companies to subrogate claims against what the victim would receive. She asked if her interpretation of what that would mean was correct.

Ms. Baker said that she believed that the insurance company is only entitled to subrogation once the victim had recovered all of the losses. She said that was addressed in other sections of the law.

REP. KOTTEL cited 46-18-201 (2), MCA, on page 8, lines 22-25 and on 46-18-241, MCA, pages 22 and 25 as seeming to be contemporaneous decisions by the court at the time the restitution order is made. She wanted to know if at a later time, when the financial

circumstances of the defendant had changed, would the court have the ability to change the restitution order into community service or to waive any part of the order.

Ms. Baker said that there are provisions in the law for waiver or modification of restitution if the defendant becomes unable to pay. Language is inserted in the bill to cover this possibility. At the time of sentencing, the court must consider the ability to pay, but the court has some latitude in determining the future ability.

{Tape: 1; Side: A; Approx. Counter: 66.7}

REP. DUANE GRIMES in response to testimony by Ms. Hall, said that he did not see an opportunity for final questioning by the defense at rebuttal.

Mr. Connor said that if a victim wishes to be heard at the time of final sentencing, there isn't any uniform methodology by which that is presented. Normally, when the victim just makes a statement to the court, there isn't an examination of the victim by either the prosecution or the defense. If the person testifies as a witness, cross examination is allowed. These are subjects the prosecution has an obligation to discuss with the victim beforehand and presents the options and ramifications of taking a particular course of action. Currently the law contemplates allowing the victim to present the information in whatever form he or she wishes to the court and give the defendant an opportunity to respond or rebut that information.

REP. GRIMES asked if Mr. Connor's assessment would result in potential further appeals if there were not an opportunity given for a cross examination.

Mr. Connor replied that as a prosecutor he is always concerned about eliminating possible appeal issues. He believes that by giving everyone a chance to be heard who wants to be future problems are eliminated.

REP. GRIMES referred to the section on page 20 which deals with how restitution affects parole. He wanted to know if the restitution ordered by a court be considered in a prisoner's sentence and if so, would the failure of that restitution allow for earlier and more frequent paroles.

Ms. Baker directed the committee to page 17, 46-23-215, MCA, and also to section 28 of the bill, and she explained how the language in these sections addresses these concerns.

REP. SHIELL ANDERSON pointed out that page 6, section 8 of the bill addresses Ms. Stevenson's concern about the court discussing the contents of the pre-sentencing report with the victim of the offense. He asked if victim is defined anywhere in the code which would include or exclude family members of the victim of

the crime.

Ms. Baker said that this is one of the sections being addressed and broadened by their amendments 3 and 4. Later on page 12 of the bill, line 30, victim is defined and would include family members. Under general principles of statutory construction, those definitions can be applied elsewhere in the code unless they are defined differently somewhere else.

{Tape: 1; Side: A; Approx. Counter: 78.2}

REP. KOTTEL referred to number 11 of the fiscal note and how it would impact counties costs for workers compensation insurance covering everyone who does community service.

Mr. Connor said that he was not competent to talk about the fiscal impact of community service. Community service programs are not something new to this bill and the fiscal impact is negligible for them. Supervision is done by local law enforcement normally and not through DCHS.

REP. KOTTEL said that she understood that because of the way the workers' compensation law is written, the county has to pay workers' compensation costs on people who are doing community service and that has increasingly become an expense for the county. She asked if the counties pay workers' compensation costs for people doing community service in the county.

Mr. Connor said he could not answer that but would find out and get it back to the committee.

{Tape: 1; Side: B}

CHAIRMAN CLARK referred to page 13, line 27 and asked why only one third of the money a person earns in prison is designated for restitution instead of one half.

Ms. Baker said that one third came directly out of the Uniform Crime Victims Act, but it could be raised to one half if that is felt to be appropriate.

Mr. Ohler said that currently inmates who are able to afford things like over-the-counter medications are required to pay for them. DCHS is also looking at co-payment requirement for access to medical services. The department would urge that whatever amount is placed in the bill, that it not be all of the inmate's account which would remove the incentive for them to work.

CHAIRMAN CLARK asked if general assistance payments being paid to someone who is out of prison and under supervision but unable or unwilling to work would be subject to the victim's restitution.

Ms. Baker said that it would depend on where the money was coming from. She found that they would need a specific exemption in

federal law for benefits that are federally related. There is such an exemption for child support where that can be taken out of veteran's benefits and AFDC. She did not know if the need for an exemption would apply to state benefits, but it would to federal benefits.

REP. MOLNAR remembered that last session there was a bill that said that workers' compensation did not have to be paid for an inmate who works in the prison. He asked if that bill had passed and if it is currently how prisoners are handled.

Mr. Ohler answered that they are not required to pay workers' compensation for inmates employed in the prison.

REP. MOLNAR asked if that could be applied to community service.

Mr. Ohler said that he was not familiar with community services law and if there was a different application.

REP. MOLNAR asked if the prisoner who is injured while working in the prison is made whole medically without other compensation.

Mr. Ohler said that currently DCHS is required to provide medical care and services to inmates who are in custody. The department is looking at internal workers' compensation at this time.

REP. KOTTEL read the code relating to workers' compensation which says that a person performing community service for a nonprofit organization is subject to workers' compensation.

REP. DANIEL MC GEE asked if it is correct that an inmate who chooses not to work is allowed that choice.

Mr. Ohler said that is correct.

REP. MC GEE asked, in the case of an individual who has been found guilty and is assigned to community service through a county which is paying workers' compensation is injured, if the state would be paying all the costs.

Ms. Baker said that 45-9-204, MCA, addresses most of these questions. Summarized, it says that if the court imposes mandatory service or community service with a public or private agency supervising the service, treatment, or education program in which the defendant is participating, they are immune from liability to the defendant for any acts or omissions which may have occurred within the course of the supervision. The immunity does not extend to gross negligence or intentional acts. The immunity for a public agency does not extend to claims for workers' compensation benefits when the defendant is injured while performing community service.

REP. WILLIAM BOHARSKI referred to section 28, subsection 3 at the top of page 21 in asking about the length of time the restitution scheduled can be in place. He asked if there were amendments to that section.

Ms. Baker said there was no amendment to that section, but that 27-2-201, MCA, is being amended to allow an action to enforce a restitution order to be brought at any time during the offender's lifetime. Even though the state supervision may have ended, a civil action to enforce that order can be brought at any time.

REP. BOHARSKI asked about the defendant who is ordered to pay the restitution doesn't pay it in full by the time the state supervision ends, if then the victim would enter into some sort of a civil proceeding against the criminal. He wanted to know if he was correct in saying that the court could go ahead and order that restitution be paid by the defendant even though they are no longer under state supervision.

Ms. Baker directed his attention to page 14, in section 46-18-247 (3), MCA, to answer his question. The victim would not have to bring a separate civil suit. Title 27, the remedies title, has a whole set of laws on how to collect on judgments and those can be used since these cases would involve a judgment in favor of the state.

REP. BOHARSKI asked if it is determined that the offender doesn't have the money or assets to pay restitution and the court orders community service, how the victim benefits as a result of that community service being performed.

Ms. Baker said that the intent of this bill is to ensure some kind of accountability for all of the offenders. As a practical matter many have no money, nor will they have money, but they believe that is not an excuse and that they should still be accountable. The community service is there to remind them that they are accountable for this crime which is committed against all of society. There is also a provision in the bill, page 13, section 16, subsection 4, where with the consent of the victim, the offender could be ordered to perform a service directly for the victim.

{Tape: 1; Side: B; Approx. Counter: 15.7}

REP. BOHARSKI asked if the offender does community service for a county which would otherwise be contracted to someone else, could some of that money that has been saved be directed to the victim to help compensate them.

Ms. Baker said that they had considered that option, but felt that it would cause some fiscal impact because right now the county is not paying for those types of services. In many cases, the service is something that the county would not have done because it is not a priority. There is no money changing hands.

REP. BOHARSKI asked if it is possible to order an offender while they are under supervision or after they are under supervision to do some sort of work to pay that restitution even if the offender does not want to.

Ms. Baker said that the court loses jurisdiction over the offender after the period of state supervision. Beyond that the court would not be able to impose any duty on the offender. During the period of state supervision, language in the bill covers circumstances beyond the offender's control. It is the ability to pay that the court considers, not whether the offender wants to or not.

REP. BOHARSKI asked if it becomes a condition of parole.

Ms. Baker answered, "Right."

Closing by Sponsor:

REP. FISHER addressed the concerns brought up during the question and answer period regarding the notification of victims of upcoming release of the offender by directing the committee to section 36 of the bill. She said that this bill clarifies when victim's impact statements must be allowed. She also clarified the intent of the bill in regards to the portion of the earnings which would be set aside for restitution.

{Tape: 1; Side: B; Approx. Counter: 22.2}

HEARING ON HB 135

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, said that this bill allows the Department of Justice to represent the state in all bankruptcy proceedings. He explained that each executive branch agency is responsible for their own collections. Many times bankruptcy is a specialty and outside counsel is often hired to deal with these cases. He described how this costs the state and how other states have benefited by pursuing bankruptcy cases within the department. The proposal would include a sunset clause which would allow a study of the workability of this centralizing of bankruptcy legal services in Montana.

Proponents' Testimony:

Chris Tweeten, Chief Deputy Attorney General, spoke as a proponent of HB 135. He reviewed the current system and outlined the need for this measure. He distributed written testimony with an attachment from the federal bankruptcy trustee as which strongly recommends support of the creation of a bankruptcy unit in the Department of Justice. EXHIBIT 12

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 1/18/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓ <i>late</i>		✓
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

EXHIBIT 1
DATE 1/18/95
HB 69

DEPARTMENT OF JUSTICE
MONTANA BOARD OF CRIME CONTROL
House Bill 69: Victims' Rights

Purpose

- To provide victims of crime with better access to information about the criminal justice system and the proceedings involved in the case
- To require consideration of the victim's interest by the courts and the parole board at critical stages in the proceedings
- To require payment of restitution whenever the victim has incurred monetary loss and the offender has the ability to contribute something to the payment of restitution

Background

Montana law currently provides for services and compensation to victims of crime, and allows a court to order restitution in some cases. However, the criminal procedure code does not expressly recognize that the protection of crime victims is part of the correctional policy of the state, and restitution is limited to cases in which a deferred or suspended sentence is imposed. Our laws governing the treatment of crime victims are good, but experience has shown room for improvement.

Provisions

► *Access to Information:*

Requires notice to victims of felony and violent misdemeanor offenses of:

- name and phone number of prosecutor and investigating officer
- the process for obtaining a protective order from a court
- the crime charged
- date, time, and location of all court proceedings
- appeal or post-conviction proceedings pursued by the offender
- release, escape, parole, pardon or death of the offender

Allows the prosecutor to discuss with the victim investigative information and contents of the presentence investigation report.

Requires that victim be allowed to attend pretrial proceedings that are closed to the public unless exclusion of the victim is necessary to protect the fairness of the trial or the victim's safety.

► *Consideration of Victim's Interest:*

Recognizes protection of victim and restoration of victim's losses as part of the correctional policy of the state.

Clarifies that victim impact statements must be allowed:

- by the sentencing judge at time of sentencing
- by the sentencing judge in death penalty sentencing hearings
- by the parole board when considering an offender's parole eligibility
- by the court or parole board when considering an offender's request to reduce or waive restitution

Requires consideration of the protection of the victim:

- by the court when imposing restrictions on an offender as part of the sentence
- by the court before allowing a sex offender who assaulted a child to be treated in a community setting
- by the court before ordering conditional discharge of a probationer from supervision before expiration of the sentence
- by the parole board before ordering conditional discharge of a parolee from supervision before expiration of the sentence

Prohibits an employer from discharging a victim or a member of the victim's family for participating in criminal proceedings at the prosecutor's request.

► *Payment of Restitution:*

Requires that restitution be imposed as a condition of any sentence if the victim has sustained pecuniary loss; allows the court to impose community service if, due to circumstances beyond the offender's control, the offender is unable to pay.

Allows restitution to be satisfied by:

- forfeiture of the offender's assets
- return of property to the victim
- payment of up to 1/3 of prison earnings
- services provided to the victim or other designated person (with victim's consent)

Requires that restitution be imposed as a condition of parole if part of the original sentence.

Requires allocation of payments made by the offender to give first priority to restitution:

- 50% of all money collected from the offender is applied toward restitution until fully paid
- the other 50% is applied toward other fines and costs ordered by the court

► *Victims' Compensation:*

Increases allowable funeral and burial benefits to \$3,500

Increases benefit to secondary victim for mental health treatment to \$2,000

2
LAWSON
DATE 1/18/95
HB 69

Amendments to House Bill 69
First Reading Copy

Requested by Department of Justice
Prepared by
Beth Baker, Department of Justice

1. Title, line 7.
Following: "OFFENDER;"
Insert: "PROVIDING THAT AN ACTION TO ENFORCE A JUDGMENT OF RESTITUTION MAY BE BROUGHT AT ANY TIME DURING THE LIFETIME OF THE OFFENDER;"
Following: "SECTIONS"
Insert: "27-2-201,"

2. Page 1, line 16.
Following: line 15
Insert: "Section 1. Section 27-2-201, MCA, is amended to read:

"27-2-201. Actions upon judgments. (1) Except as provided in ~~subsection~~ subsections (3) and (4), the period prescribed for the commencement of an action upon a judgment or decree of any court of record of the United States or of any state within the United States is within 10 years.

(2) The period prescribed for the commencement of an action upon a judgment or decree rendered in a court not of record is within 5 years. The cause of action is considered, in that case, to have accrued when final judgment was rendered.

(3) The period prescribed for the commencement of an action to collect past-due child support that has accrued after October 1, 1993, under an order entered by a court of record or administrative authority is within 10 years of the termination of support obligation.

(4) An action brought under 46-18-247(3) to enforce an order of restitution entered by a court of record may be commenced at any time within the offender's lifetime during which the restitution remains unpaid."

Renumber: Remaining sections

3. Page 6, line 12.
Following: "may"
Strike: "discuss"
Insert: "disclose"
4. Page 6, line 14.
Following: "report"
Strike: "with"
Insert: "to"
5. Page 14, line 3.
Strike: "officer of the board of crime control"

(over)

6. Page, 14, line 4.
Following: "payment."
Insert: "In cases where the victim has received compensation under Title 53, chapter 9, the court may also order an officer of the board of crime control to supervise the making of restitution and to report to the court any default in payment."
7. Page 23, line 12.
Following: "[section"
Strike: "36"
Insert: "37"
8. Page 24, line 29.
Following: "[section"
Strike: "35"
Insert: "36"
9. Page 24, line 30.
Following: "[section"
Strike: "36"
Insert: "37:"
10. Page 25, line 3.
Following the first "[section"
Strike: "35"
Insert: "36"
Following the second "[section"
Strike: "36"
Insert: "37"
11. Page 25, line 6.
Following the first "[section"
Strike: "35"
Insert: "36"
Following the second "[section"
Strike: "36"
Insert: "37"
12. Page 27, line 10.
Following: "[Section"
Strike: "3"
Insert: "4"
13. Page 27, line 12.
Following: "[section"
Strike: "3"
Insert: "4"
14. Page 27, line 13.
Following: "[Section"
Strike: "20"
Insert: "21"

15. Page 27, line 14.
Following: "[section"
Strike: "20"
Insert: "21"
16. Page 27, line 15.
Following: "[Sections"
Strike: "35"
Insert: "36"
Following: "through"
Strike: "37"
Insert: "38"
16. Page 27, line 16.
Following: "[sections"
Strike: "35"
Insert: "36"
Following: "through"
Strike: "37"
Insert: "38"
17. Page 27, line 23.
Following: "[Sections
Strike: "10, 13"
Insert: "11, 14"
Following the first "and"
Strike: "21"
Insert: "22"

STATE OF MONTANA
DEPARTMENT OF JUSTICE
BOARD OF CRIME CONTROL

303 North Roberts - PO Box 201408 - Helena, MT 59620-1408

Joseph P. Mazurek
Attorney General



EXHIBIT 3
DATE 1/18/95
HB 69

Phone (406) 444-3604
FAX (406) 444-4722

HB 69: REVISE CRIME VICTIMS' LAWS

SPONSOR: REPRESENTATIVE MARJORIE FISHER

Testimony: Gene Kiser
Montana Board of Crime Control
444-3604

The Montana Board of Crime Control is the state agency responsible for the administration of the Crime Victim Compensation Act of Montana and the Victims of Crime Act funds. Additionally, the Board will assume administrative responsibility for the Violence Against Women Act funds that will be coming to Montana during the coming fiscal year. These funds will be used to provide monetary assistance to local law enforcement and prosecution in developing and implementing more effective policies and services for preventing and responding to violent crimes.

The Board has direct contact with victims through the Crime Victim Compensation program.

This program provides assistance to victims who have been injured as the result of criminal act.

Direct contact with victims on a daily basis has provided us with insight into the trauma and difficulties victims face. We believe that the sections enumerated in HB 69 address many of the /problems currently encountered by victims in the criminal justice process. It also allows crime victims to receive compensation for funeral expenses in cases of homicide and mental health for secondary victims in cases of child sexual assault.

Because of my 30 years experience in law enforcement in the largest metropolitan area in the state, I have witnessed first hand the frustration and anger victims express due to the inadequacies and failures of the criminal justice system. Victims, traumatized by the crime itself are further victimized by being cast into an unfamiliar, impersonal criminal justice system replete with long-standing barriers. It is critical victims be informed of and included in the criminal justice proceedings by taking an active role in the process thus restoring their faith in the system.

HB 69: REVISE CRIME VICTIMS' LAWS

Page 2

When victims are given the opportunity to be involved in their own case they are often more cooperative and this allows them to regain some control of their lives.

Too many times the criminal justice system is accused of focusing more attention on the rights of the accused to the exclusion of the rights of the victim. This bill will allow the concerns of the victims to be brought into the process in a more comprehensive manner than ever before.

Many of the barriers victims face will be addressed and corrected with the passage of HB 69.

The Board of Crime Control supports this legislation.

Thank you.

EXHIBIT 4
DATE 1/18/95
HB 69

Neighborhood Watch

We have recently been hearing much about preventive programs for crime control. Can you imagine some of our neighbors in neighboring states, putting bars on their windows, alarms and other devices in their homes and autos for protection? And when crime happens, the neighbors have no information to give, because they are not familiar with their neighbors names or habits. Who is the incarcerated, not the criminal but the innocent victims of crime. We are still in a position to prevent that way of life in our community, but only if we work **together** with our neighbors, schools and law enforcement staff.

Two successful programs we as a community can get more involved in, to prevent crime in our community are the Neighborhood Watch, where neighbors take turns patrolling their own areas and DARE, a program to teach our youth to say no to negative peer pressure and to build a comfortable relationship with our law enforcement. To explain why they work so well, we need to go back 30 years and re-think how our families and neighborhoods functioned at that time. During the pre-70's era, a family was less transient, employment and families kept many of us in one place. The advantage being that neighbors became familiar with each others habits, as well as comings and goings. If you needed something, you most likely would call on the assistance of a neighbor. If your children went to play, you were comfortable with the knowledge, your neighbors would be keeping watch for potential dangers, and you in turn would do the same for them.

Today, with job markets ever changing and moving much more accessible to us, we have spread out to new areas, often leaving the comforts of familiarity behind. It's interesting that one of reasons people move here, is the sense of community they feel. Yet, having come from areas where it was not in your best interests to get involved closely with neighbors, it becomes difficult to break the acquired habits we so disliked in the areas we came from.

What we are proposing is some simple community minded examples of how we can all have a neighborhood watch, that becomes a comfortable way of life and can eliminate crime or at least give us some control over it.

1. When a new neighbor moves in, make the effort to introduce yourself, involve your other neighbors in this process. Find out what they do, how many children they have, etc. Let them know, how your neighborhood functions. Encourage them to become a part of the "family" on your block or area. I have always had a open door policy for my neighbors, if they need anything I try to assist, house watching, babysitting, picking up mail, and even keeping an eye on what is normal behavior, who is gone the most, etc. When you put up a barrier, out of fear or habit, you put yourself and your neighbors at risk for crime.
2. When your children bring home new friends, take the time to get to know them and

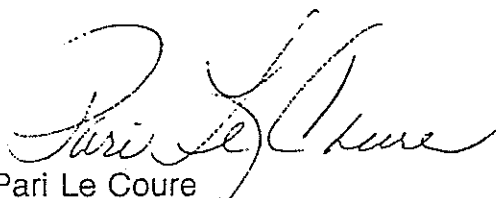
their parents, letting each other know what your rules and expectations are. Then follow up, it isn't a matter of distrust, it's showing just how much you care. If they are going to a function or spending the night, make a simple call to ask if the arrangements made are satisfactory with the other parents. Remember our youth, we experimented with authority and our children are no different.

3. Schools are to educate, not to babysit or raise our children. Go to the schools, get to know the staff and the teachers, become familiar with the school curriculum. Learn the names of the other students, spend a lunch hour, or what ever time you have at the school. Strangers are easier to spot, if the children are familiar with the parents and staff. Get involved with and endorse the DARE program when it comes to the classroom.

4. If you see something suspicious anywhere, report it. Our police can only do as much as we allow them to do. If we never call, they can't act. Suspicious behavior when reported gives our law enforcement a leverage on crime watch areas. (i.e. if they receive several calls on an unfamiliar car or person wandering around, they can put extra patrols to that area.)

Safe communities come from close neighborhood associations with one another. These associations are the one effective and inexpensive tool we have, to bringing down our crime rates, building strong and safe communities as well as resolving local concerns and issues.

For additional information on how your neighborhood can start a Neighborhood Watch program or for information on what the DARE program can do for our youth, call 523-4668, or call OCD to find a neighborhood association in your area, or information on how to start one. the DARE and Neighborhood Watch programs are designed to get your neighborhood on the track of safe living. We need to all learn to "just say NO", and get involved, then crime will decline. DARE starts our youth in the positive direction at an early age, a Neighborhood Watch program is the preventive measure to assist our law enforcement for safe community living



Pari Le Coure

EXHIBIT 5
DATE 1/18/95
HB 69

Pari Le Coure
1119 Lincolnwood
Missoula, MT. 59802
543-3649
November 11, 1994

ATT. EDITORIAL

LETTER TO THE
EDITOR -

In reviewing the 1991 statistics from the Bureau of Justice, I find that 50 % of the violent state prisoners are recidivists. Also, 59% of the state prisoners have at least a high school education. Add the fact that in the same statistics, only 16.3% were armed with a gun during their current offense, yet over 50% were under the influence of alcohol and or drugs, would it not suggest that we are going in the wrong direction in resolving crime in our communities?

With the elections over, we should be rolling up our sleeves and making the necessary changes to ensure a positive sense of security, in our homes and in our community. Our elected officials need to be responsive to our needs, not the desires of the criminals who have victimized us.

The Governors Crime package needs to be passed with the support of the people. Proposed are the following:

"Truth in Sentencing", if sentenced to 10 years they will serve ten years. Why should they be awarded "good time" when they have violated the rights of another? The incentive to be good is before the crime, the victims get a life sentence of fear and pain, without any "good time".

"Prison Reform", this doesn't need explaining after the media coverage of the Becky Richards / Micky Campbell episodes. Put yourselves in the shoes of the victims to that crime, and how they must feel seeing her get the privileges that are not available to their son and brother. Looking at the statistics on recidivism and education, we are going in the wrong direction. "Prison Resorts" as called in the Readers Digest, should not be another entitlement we pay for. Clean and safe, is all that is necessary. And they should be working to earn their way, don't we?

"Lifetime Restitution", far too often the victim and the victims family are forgotten. The emotional and financial impacts are astronomical. There are thousands of criminals, who have "profited" financially from committing crimes!

"Lifetime registration of sexual offenders", with 226 registered sex offenders in Missoula County since 1990, need more be said!

"Revision of the Youth Court Act", our youth offenders need to be accountable for their criminal actions, we as a society tend to excuse the actions of our youth, for varied reasons and our youth know the laws and how they are protected by them. Making our youth more accountable and responsible for their actions is a step in the right direction.

"Limit Appeals", let's face it how many appeals did the victims get? We pay for those appeals with clogged courts, court costs, etc.

We need to contact our elected officials and get involved in our futures and our youths futures. Remember, Crime in our community will only be eliminated, when those who are not impacted by crime, become as enraged as those who are.

Pari Le Coure

Pari LeCoure
1119 Lincolnwood
Missoula, Mt. 59802
543-3649

What is going on here? We have two people tragically murdered, two families trying to deal with the shock and pain of losing their loved ones, two children who have lost tremendously, and we are cheering and supporting the suspect!?

We have a football great, that has been afforded a financially comfortable life, because of the adulation the public has given him, that is now the prime suspect in two gruesome murders, and the public is drawn to him and his defense, not the victims. Take a deep breath, and re-think this media staged event, by answering the following questions to yourselves:

Who will ultimately profit from this murder? The children, who have lost both parents, due to rage, jealousy or hatred? The parents of the victims, who will be living out the remainder of their lives not understanding why, with the longing to hear their childrens voice once again, to touch them? The remaining family and friends who loved them and now have a void in their lives?

What will this cost us the taxpayers, to try this sensationalized case? What cost's will the surviving family endure both monetarily and emotionally?

Are we seeking the excitement of the tackle or the justice for the murdered victims? What does this say about us as a society? That we have been reduced to the thrill of the kill, just as our Roman ancestors did with the arena sports (i.e. lion dens, gladiator sports)?

Have we witnessed preferential treatment, to a convicted and repeated domestic abuser, and are we condoning it?

What's the point of all the efforts to place laws like the Brady Bill and the 3 Strikes your out, the National Crime Bill, Our Montana Crime Bill, when the accused gets all the attention not the victims?

I leave your thoughts with this, "Justice will only be served when those who are not injured by crime, feel as indignant as those who are." Written by Solomen 635-577 B.C.

Pari LeCoure

Printed in Missoulian

EXHIBIT 5
DATE 1-18-95
L HB 69

Pari Le Coure
1119 Lincolnwood
Missoula, MT. 59802
543-3649
November 19, 1994

In the Missoulian we saw the tragic results of hatred with the little seven year old mortally wounded in Sarajevo, little Nirmen Divovic didn't have any hatred, only fear, yet hatred took his little life. With all this tragedy occurring daily in our world, it saddens me to also read in the Missoulian, that a court has barred graduation prayers in San Francisco, even with the majority of the students wanting it. In light of the mess we are living in, maybe the prayers wouldn't be such a bad idea. Obviously things haven't improved and have only worsened since the right to prayer in schools was taken from our rights to freedom of speech. At this point what have we got to lose by trying what the majority wants?


Pari Le Coure

Steve Woodard,

How could anyone not cry seeing the picture of little Nirmen, all the results of the unwillingness of a few to try to resolve problems and obstacles, without hatred and violence. Sadly we are not immune in our own country.

PARI LE COURE
1119 Lincolnwood
Missoula, MT. 59802
543-3649

33.5 billion dollars to do what?! To fund more prisons, give us 100,000 new law enforcement officers (just how many would be given to us in Montana?), and fund social programs and gun controls (knives and other weapons were the majority weapon of choice in weapon robberies during 1987-1990)!!

It doesn't take a genius to understand that the criminal is the problem, not the weapons, not over crowded prisons or the lack of law enforcement. If we want to lower our crime rate in this country, then let's spend the money to send a strong message to the potential criminals, that we the people of the U.S., have had enough and will not continue living in fear, we will not continue to place alarm systems in our cars or in our homes, we will not build homes with bars on our windows for protection. That it is our right to have freedom and safety, not the criminals.

I've said it before, by todays standards most of us came from dysfunctional homes. Yet, the majority of us know the basic differences between right and wrong. Why are we allowing the minority to victimize us? We, as a nation, should be demanding our rights to live without fear of becoming a statistic. The median loss per crime in 1992, was \$524 (this includes crimes involving no loss). The number of victims receiving medical care due crimes of violence was 1,419,940. The amount of economic loss in 1992 for all crimes was \$17,646,000,000. Youth violence has increased, what is wrong with teaching the basic principles of respect and responsibility for your actions at a young age, to curb our rising crime rate. As long as we continue doing what we are doing, we will continue to get what we get.

Pari Le Coure

As I sit at my desk, I glance up at the picture of my best friend and brother, a simple reminder of the 36 years we shared together and apart. We laughed, shared sorrows, had so many wonderful experiences. Now, I have only the simple material reminders and a chest full of memories, to go forward with.

On Jan. 24th, 1992, I and my family became the surviving victims of crime, my brother while on a vacation, was stripped of his right to live, at the hands of still an unknown. A person so filled with hatred or pain, that he decided to inflict his frustrations on another human being. His problems, have now become the pain we live with daily, and will have to endure for the remainder of our lives. How can I ever forget, the final good-byes, my Father, a proud and well- respected man, crumpled and sobbing over my brothers casket, My Mother stiff with shock and grief unable to respond to anyone, my little son placing in the casket, a drawing he had made for his special Uncle. A part of me died, when they closed the casket for the last time. He was suppose to grow old with me, I had envisioned the future as a time when we would share our many years of memories together, as we had been since his birth. Now, we have to go forward without him. This is the emotional impact, that crime has on the survivors.

The less heard about impact is the financial impacts, not just to the survivors but to our system. Here are some examples:

It can costs as much and more than \$5,000 to investigate a homicide, the lab work, investigators wages, records, court orders for information, traveling time, etc. Now add to that the following:

What does it cost to have a court appointed attorney represent a criminal? Well, it could be many thousands, what about the judge? the jury costs? the court recorder costs, the prosecuting attorney? the filing costs? travel costs? And ultimately the costs of incarcerating, educating, providing benefits most of us have to work for to "punish?" the criminal? The costs of appeals both monetarily and in time for the access to the over-booked courts, the list goes on and on. That's just another part of it.....

The victims survivors monetary costs are never thought of, listed are some figures given to me by families of victims...

Example A. hospital costs, \$3,650.. funeral costs, \$3,265.... counseling for the children of victim \$35.00 an hour per child, in this case there are 3. Social Security paid to the children at \$306.00 per child a month.

B. Counseling \$175.00 an hour, for a total of \$10,000 so far. Hiring of private Detective to assist in resolving case, \$10,000. Days missed at work, 46 at \$100 a day. Sold home at a loss, because of the painful reminders of daughter, funeral costs \$3,543.

C. My brother death, \$1,113 emergency services fee, hospital \$2,942, air fare to bring my brother home and family, approximately \$2,500. Funeral \$5,200(his internment was 47 miles from church) lost wages of family members approx. \$ 2,000+, phone calls, hundreds of dollars... medical and prescription costs running into the thousands for all the family due to the emotional trauma related to the unsolved homicide. And we are still spending money for phone calls and correspondence to resolve his case.

Statistically, 90% of marriages fail after a murder in the family.

Can we afford to wait for 3 strikes? These financial burdens are borne by every taxpayer, from the day of the crime and well into the future. Haven't we had enough? Solomen wrote during his lifetime 635 BC to 577 BC, -:-. " Justice will only be served when those who are not injured by crime, feel as indignant as those who are" and yet what have learned from these words of wisdom. If you think it will never happen to you, well, so did I, none of us are immune. I have been told we have the highest crime rate in the world, would the fact that we have so many wonderful benefits for our criminals, be part of the answer? How would you respond to 3 strikes? Saying, "well it's better than nothing"? "We have to be fair to the criminals?" Who was there to give rights to the victims? Did they receive 3 chances? Think about it, and get indignant!

The first step, is to confront our youth offenders, they need to be accountable and responsible for their actions, before the age of 18. We are seeing a rise in violent crimes with our youth in the State of Montana. Based on statistics formulated by the Statistical Analysis Center, of the Montana Board of Crime Control, which shows an increase from 1992 of 8.9% for crimes against persons, to 15.2% in 1993. We also had 10,414 juvenile referrals in 1993. Our youth offenders, have the potential to become the adult offenders, can we realistically afford to endure the costs of 10,414 adult offenders, after paying for the costs of prosecuting them as youths?

The two key words that need to be brought into any reform we do, are ACCOUNTABILITY AND RESPONSIBILITY FOR THEIR ACTIONS. If what ever we propose does not address those two words, then we have failed to do what is being asked by the majority of our law abiding citizens.

Pari LeCoure

Increasing fees for gun dealers and "3 strikes your out"? These seem like mundane and futile attempts to solve a crime spree that has little to do with the ability to purchase guns in a legal market. Raising fees on legal business' will target a very small portion of the problem and waiting until a criminal has committed a crime 3 TIMES?! is too late. If one carefully researched the base contributor of most major crimes, they would find it to be, alcohol and drugs.

It was stated to me, by a physician, that if alcohol was new on the market and the FDA were to determine the health risks in today's society, that alcohol would be banned. Of course, we had an unsuccessful attempt at prohibition and we have yet to control drug use and abuse. So how do we address the on-going root of this country's continuing rise in crimes? It's by learning and administering solutions on how to control alcohol and drug abuse, also to re-instate the importance of family and community values. We have treatment centers in our society, that can be successful if, A.) the abuser is willing to change B.) If they can find the funding to attend an extremely expensive treatment program. But, as a society, we need to make it clear, on what is acceptable behavior in our communities. We can not condone one form of bad behavior then chastise another, and expect our youth and potential criminals to understand our message. Consistency, has been determined to be a positive in child rearing, so why not set that, as a standard, for our laws on prosecuting criminals and a standard on what is acceptable behavior in our society.

I recently wrote down a list of friends and family who have died in the last decade, and found that alcohol and drugs were the main contributor to a majority of their deaths, whether it was murder, suicide, accidental or health related. How many people do you know who have succumbed to a life of tragedy, illness, had accidents, financial problems or death because of substance use or abuse? So why do we as a society condone and excuse these behaviors, then seek ways on how to stop crimes from being committed? Are we not being hypocritical?

Concerns addressing the expense of incarceration and the limited space in our prisons have been brought up over and over. If we set a standard, with no chance of expensive and lengthy litigation which results in: deferred and reduced sentences, plea bargains and appeals, etc., could we not then better use those monies, that we, the taxpayers are doling out, to increase space, if needed and fund rehabilitation programs that could eventually cut down the rate of repeat offenders and the space needed for them? Also, if a potential criminal knows ahead of time "if you dance, you WILL pay the fiddler" with no if, adds or buts, just maybe, they might think twice about doing something that will give an absolute conviction instead of a possible conviction, if applied.

Our laws of today, are set up with so many variables, that if one can access a good attorney, a lenient judge or sympathetic jury, one can virtually get away with murder. (Site the case in the Missoulian "Acquitted Killer finally confesses", of the man who killed his wife, was acquitted and can not be re-tried for it). Sure there are cases that would not warrant absolutes in penalties, but they would be minimal compared to the many offenders, who society would benefit from, if stricter guidelines for sentencing were absolutes.

Our law enforcement staff, who continually put their lives and safety on the line for us, need us the taxpayers and citizens, to be the ones lobbying our elected

lawmakers for crime control, not special interest groups who have their own agenda. Isn't it time the majority made the laws and corrected a on-going and increasing problem in our country?

Pari Le Coure
1119 Lincolnwood
Missoula, Montana 59802
406-543-3649

EXHIBIT 5
DATE 1-18-95
HB 69

November 15, 1993

Yes, there is a death penalty in Montana and all of our other states. Our courts and our system give this sentence not to the criminals, who have the rights to delayed trials, taxpayer given attorneys, leniency, good behavior time and appeals processes. This death penalty goes to the survivors of the victims of such heinous crimes.

It begins when they are first told of the death, in addition to the shock that one usually encounters with any death experience, homicide survivors also have to deal with media, investigators, courts, and the mass of emotions not only from within themselves, but from everyone surrounding them. It's a slow death process, that eats at every part of you. The mother and father, who spent so many years nurturing and protecting their loved children, are stripped to the bone in one brutal and selfless moment. The siblings who loved and bonded with the victim, they are torn inside and out and lost. For the other loved ones in the victim's lives, they are raped of the love a child may of had, the love and partnership the spouse or loved one may of enjoyed for years to come. This is the death sentence given to millions in our educated and fair society, it's a slow death, with little recourse in our current justice system.

The saddest part of this sentence, is there is little or no compassion for the ache in the hearts and frustration homicide survivors through live daily. They, who have given so much to the victims during their lives, are now the forgotten ones. For obvious reasons, they are left out of the details in an investigation, they are the ones who are at times, the least welcome in the courts. After all, we must keep the focus on the accused, don't they deserve a fair trial? I find it unbelievable that one never hears about the unfair trial given to the victim, just before life was taken from them and all of their loved ones who have been left behind to relive the horror and agony of the crime over and over.

We are all responsible for allowing this to continue, and believe me, none of us is immune, I know! I witnessed and felt the pain and frustration in my own family when a senseless murder was committed on a very dear and loving nephew, only to see the accused go free! Why!? Because of our system for JUSTICE?!?! Now, I am actively involved in my own brothers homicide investigation, who died at the hands of an unknown at this point in the investigation. I thought I was alone, until I found a network of new friends from all over the country, who are dealing with the same kind of on-going personal anguish over thier loss and frustration with the system that deals with un-justice, as we now know it.

What do we watch on TV and read in books? We focus on the sensationalized, media grabbing event, the criminal and his life story. Do we want to hear about the grieving and confused family, and how it impacts them emtionally and financially? Do we want to hear about the victim? Why no, it might not sell as much, or it maybe is too close to home for us. Some of the special interest groups of todays world, look for leniency for criminals and in crimes, because of dysfunctional family situations, etc., By todays standards, wouldn't that include just about any one of us, in one degree or another?

Yet most of us know capital crime is wrong.

Our judicial system is to prosecute not coddle, WE need to stand up and make it happen. I add to an editorial written on Nov.15,1993 from Missoula, Montana, in part, "Without the judiciary's will to carry out capital punishment, it's a waste of (everyones) time and money to issue death sentences in Montana. Better to sentence our worst offenders to life in prison, without the possibility of parole (and with the loss of all priviledges, as they gave to the victim and surviving family)- eliminating a lot of redundant appeals in the process (which add further grief to the survivors and courts)- than to go through the charade of pretending to have a death penalty. We should be procesecuting the criminal, not persecuting even further, the victim and homicide survivors and our public, as we have allowed in todays world!

Pari LeCoure
1119 Lincolnwood
Missoula, Mt. 59802
406-543-3649

EXHIBIT 6
DATE 1/18/95
HB 69

Pari Le Coure
1119 Lincolnwood
Missoula, MT. 59802
406-543-3649
December 29, 1994

Open Letter to the ACLU and the U.S. Department of Justice:

Although I sympathize greatly with the victims and the victims families, (of which I know one family) who were impacted with the loss of life, due to the callous and unfeeling acts of a few during the riots at the Montana State prison. I have to question the lawsuit against the state for unsafe and unhealthy conditions. It appears to me, that the conditions for our prisoners are better in the areas of "rights", than their victims that put them in the prison system. We have labeled "dangerous offenders", that have the "rights" to attend various programs in the rehabilitation areas, they have the "rights" to attend educational programs, they have the "rights" to file appeal after appeal with our judicial system, (at the expense of the victims and victims families tax dollars), they have the "rights" to medical aid paid for by the taxpayers. They have the "rights" to "good time" and "rewards" that take them out of the prison system for those privileges. The list could go on and on.

On December 25, 1988 my nephew, who was 22 was denied the "right" to live, at the hands of a person, who ended up having all the "rights" in our court system. With our current guidelines in prosecuting, the accused was able to walk free after taking a life, and left all the emotional and financial burdens on the surviving family. On January 24, 1992, my dearest brother was denied the "right" to live, by a person(s), yet unknown. In my brothers case, again our current guidelines make an arrest difficult. Our family has had to bear the burdens of all the emotional trauma as well as the ongoing expenses incurred by the loss of my brother, yes, even paying outrageous sums for mental-health care.

We are working people, who pay our taxes and try to abide by the law, yet the very government we are helping to support has forgotten us and our loved ones. Our dearly missed loved ones, have become just another statistic in the growing number of innocents, denied the very "rights" our criminals are demanding. When will it be our turn? Who will represent us? The legal system? Only, if all is in order and we have the money to hire the professionals needed. Victims Aid is available, but can only go so far with the amount of victims in todays society.

It doesn't take an "Einstein" to figure, that our court systems are bogged down with redundant and ridiculous cases, which prevent the very people we have hired, the ability to perform their jobs in a proficient manner (I am referring to our tax dollar employees, as well as out of the pocket expenses for additional legal representation). Our loved ones didn't get the opportunity to receive "free" medical, dental and mental health care, as well as "free" access to adequate housing. One thing that has amazed and humored me, is the fact that the "overcrowded" prisons, are not brought about by law abiding, taxpaying citizens, those conditions are brought about by the very people who are complaining the most, the incarcerated! When will it become a standard, that

violating the "rights" of others is not acceptable in our society and will no longer be excused or tolerated?!

The very title, American Civil Liberties Union, would suggest the group is defending the wrong people. We are truly the victimized, not the incarcerated or the accused, who had the same choices we have, to not victimize the innocent.

The Federal Justice Department, again the title leaves doubts among our victims and survivors as to who the Justice Department is truly representing. Charging that, "inmates are being deprived of "rights", privileges or immunities secured or protected by the United States Constitution." (quote from the Missoulain article, Dec. 29, 1994), leaves much to be desired by the victims and survivors from courts and judicial system, who has not given the same "rights" to us.

I plead with you, to re-think your suit, which will further burden our courts and prevent the financing and execution of proper sentencing in crimes against the innocent. What good is it to sentence someone to 25 years, knowing they will serve only 25% of it, at the most? What good is it, to supply 3 meals, medical benefits, warm and comfortable sleeping, educational and recreating facilities, with no requirements from the incarcerated to financially contribute to those expenses paid for by the innocent victims and survivors tax dollars? Somewhere along the road to finding a balance in our system, the ACLU and the Federal Justice Dept. have forgotten the very people who are suffering daily, whose lives have been altered indefinitely, and who will "pay" the consequences of those acts derived from the need of "power and control" by another, long after the courts have released the incarcerated. Some justice!

I've said this many times before, by today's standards, most of us come from dysfunctional families, yet the majority of us know and follow the law the best we can and would not willingly inflict harm on others. When a hard working citizen has something as small as rake stolen, he feels violated and it has an impact on his "rights" to live without fear and freedom for life. Our law enforcement staff, should the "rights" to perform their duties, with full support from the judicial system. I often wonder why we don't honor them more, with the knowledge that they risk their lives daily to try to protect us, only to see the their "rights" to safety constantly being restricted, by the "rights" of the accused.

I look daily at the picture of my brother smiling back at me at my desk, thinking about the fact that he never received 3 chances to live, he never received even one appeal, he never received any "rights" to live out his life with his family, in a nice warm and comfortable facility, with 3 meals and all of the benefits given to him (he had to work to eat and receive any benefit in life) and the saddest thing of all is, only his family and the limited by "rights" law enforcement staff, are working in his behalf now. The pain of being impacted by crime can lessen in time, but it will never go away. I thank you for taking the time to consider my thoughts, which are the same thoughts of thousands and thousands of victims to crime.

Respectfully,


Pari Le Courte

c.c.

EXHIBIT 6
DATE 1-18-95
HB 69

American Civil Liberties Union
U. S. Justice Department
Senator Conrad Burns
Representative Pat Williams
Governor Marc Racicot
Rick Day, Montana State Corrections Department
Missoulain
Great Falls Tribune
The Daily Record
The Billings Gazette
Bozeman Chronicle
The Washington Post

EXHIBIT 7
DATE 7/18/95
HB 69

Pari Le Courc
1119 Lincolnwood
Missoula, MT. 59802
543-3649

To be introduced for Crime Bill and Prison Reform.....

A requirement for all inmates to successfully complete a course on Power and Control Management and monitoring program, prior to parole hearings.

This program would be a generalized program to confront the personalities that promote criminal behavior patterns. One common trait that all inmates and potential inmates has, is the need to control and the desire for dysfunctional power over their victims and/or families. Stress Management and learning to control the dysfunctions within them, that become the under lying motives for committing the crimes, is one positive way to confront recidivism. The funding for this programs could come from the recently passed Federal Crime Bill, which has much funding for prison treatment programs.

Currently we have programs for sex offenders, alcohol and drug treatment, but they are condensed and targeted.

Sex Offenders should be required to be enrolled in an extensive program that requires at least one year of treatment and one year of follow-up treatment and monitoring by a registered therapist. (Lifetime registration and monitoring is currently being proposed in the Montana Republican Party Crime Bill, this should be an amendment to that proposed bill.)

Also, the sex offender should have felony charges against them, for the following first time offenses: 1. any sexual offense against a minor, that involves penetration or physical/ emotional trauma. 2. Any offense that inflicts bodily harm on the victim (i.e. physical abuse or force that causes external or internal injuries). Misdemeanors should only be for 1st offense, that does not incorporate the above listed 1 and 2.(i.e. fondling, exposure,etc.) but should include the full sex offender treatment program. It was also suggested, but but civil rights would not allow it, that after the 3rd offense of a sex crime the death penalty would be in order. I would like to modify that by suggesting, that after a 3rd offense, life in prison or house arrest with a body monitoring system placed on the criminal at all times.

Alcohol/drug treatment programs should require a follow-up monitoring program, that includes meetings and testing after they leave the prison. With the proposed Power and Control Management Course, a recommendation should be made to continue meetings after leaving the prison, with joint monitoring by staff and probation boards. It seems the environment of the prison, is not conducive to the success of treatment in the "real" world, with that we should encourage follow-up treatments, re-introduction into society. Again, the funding should be appropriated from the Federal Crime Bill funding.

I fully support the Republican Party Crime Bill, which was introduced and voted on during the 1994 Republican Convention and will do all I can to promote the passing of the entire bill.

Mr. Chairman, members of the committee

My name is Marian Stevenson. I'm from Hobson, Mt.

On March 27, 1994 my life ended.

My husband, Wayne Stevenson was killed.

He was ambushed from the dark and shot six times by an employee on our Central Montana ranch.

In the past 9 1/2 months I have learned more than I ever wanted to know about the criminal justice system.

The inequity of access to information soon became apparent to me. When an arrest is made it seems the law is heavily weighted towards the rights of the defendant. Victims or their families are often denied information that is available to prosecuting and defense attorneys and to the defendant.

We are fortunate here in Montana to have many people in law enforcement, and investigation and prosecution that are caring, compassionate and dedicated to doing their jobs in a competent and professional manner.

Assistant Attorney General, Mr. John Connor and his staff were very careful to keep me informed about what they could ^{regarding the case} ~~Some~~ attorneys are not that considerate.

I can only imagine how horrible it would be to open a newspaper or turn on the radio or TV and in that manner learn of a bail hearing or other Court proceeding being scheduled.

For this reason I believe this legislation and the victims rights that it insures is necessary.

Wayne and I were married for 34 1/2 years. We lived together, loved together, worked together; shared our lives completely and I feel it should be my right to be informed about what happened, how it happened and to be made aware of all legal proceedings. I did not want to be protected from unpleasant details. This crime was done to me as well as to my husband. Wayne's life was stolen from him by a brutal, senseless act and my life with him was destroyed.

A question I had early on was - how did my husband die? Having shared our lives together so completely I was in agony not knowing what happened in his last moments. Since the only living witness was the defendant and he was not talking - I asked the authorities if they could explain to me what

3.

the evidence indicated had taken place. It was important to me to know as much as possible about what had happened. I feel very strongly that this should be a right available to victims.

In our case the defendant entered a guilty plea shortly before the trial was set to begin. Then the judge ordered a pre-sentencing report. This report is done by a probation officer. In the course of his investigation for this report, the defendant was interviewed, I was interviewed, I believe the defendant's wife, and possibly others were interviewed.

We were informed that family and friends could write letters or written statements to the Court expressing their opinions and comments on the case.

Many family members and friends did so. This report was given to the judge and the sentence he handed down was based on this report along with verbal testimony given at the sentencing and on information from previous Court proceedings.

This pre-sentencing report is made

4.

available to the judge; to the prosecuting attorney; to the defense attorney and to the defendant; but it is withheld from the victim. I was told that this is a sealed document and could be released to me only by orders of the judge after the sentencing had taken place.

The judge denied our request for release of this information. In the judge's comments regarding the denial he indicated he wished to spare us further pain and we should cherish the good memories.

What could be in this report that could possibly cause us any more pain than we have already been through? And why should someone else decide what we can or cannot know about this crime that has torn our lives apart?

Only Mr. Connor's assurance that he would willingly release the report to me if he could legally do so keeps me from imagining that there must be something terrible contained within it. Why can the defendant see this but not the victim?

5

I hope that by letting you see a glimpse of our pain and what we have endured you will have gained some insight into what a victim goes through. And that you will give careful consideration to this proposed legislation.

Thank you

DRAFT - CRIME BILL

This Draft represents what is considered to be fair and equitable to perpetrator, victim and society alike.

As a preface to this Draft, an overall policy statement is indicated in order to make clear how various elements of this Draft fit together and benefit the whole.

The overall considerations should be accountability, exploitation, safety, healing and prevention. It is critical that we enact laws that promote what works.

What is it that we wish to accomplish? Is it vengeance, retaliation and/or exchanging exploitation for exploitation? Or do we want rehabilitation, healing and safety for the public, as nearly as that can be achieved?

What does it take to reduce crime, violence and suffering?

Someone said that our penal system is based on the axiom that if you make someone feel bad enough, long enough they are rehabilitated. Sadly, that is not true. Most of our prisons are revolving doors. Meanwhile, sex offenders reoffend. Domestic violence abusers abuse or murder, as many of them have threatened or promised to do upon being released from prison. Sociopaths find new ways to fool, deceive and further their lifestyle, only to wreak their havoc again and again on those in their path that threaten or thwart their goals. Seriously mentally ill prisoners, without help, or monitoring, are like loose canons on an unsuspecting public. Consequently, this draft attempts to implement some laws that address all these issues, and give us a real chance to do something positive, innovative and creative.

The laws and/or measures should always address five main areas:

1. ACCOUNTABILITY
2. EXPLOITATION
3. SAFETY
4. HEALING
5. PREVENTION

ACCOUNTABILITY means accountability for everyone. Perpetrators cannot be rehabilitated unless they own what they have done. This should be the overriding concern of any rehab program. Victims can assist in this process by being willing to charge and/or identify how they have been abused or harmed. In-prison confrontational procedures that allow perpetrator and victim alike to face one another address feelings and reactions pertaining to the crimes committed and the consequences of those crimes are but one way to begin the process. We must make it safe for victims of domestic violence, for example, to charge abusers without fear of retaliation at a later date..

DRAFT - CRIME BILL (Continued)

2. EXPLOITATION - Anything that exploits another human being, whether perpetrator, victim or society at large, is wrong, destructive and demoralizing. Laws already on the books that are exploitive, like the sexual deviant law, should be repealed and new laws should scrutinize the basic tenets involved, and be sure, that one form of exploitation is not exchanged for another.

3. SAFETY - Society has a right to expect safety from those who seriously offend and intrude on the rights of others and cause bodily harm. There are many safety issues that could be enacted and enforced in terms of monitoring systems. For example, sex offender could be required to report to counselors and/or parole officers during their lifetime in an effort to prevent any recurrent tendencies once they are released from prison, and successfully completed a rehabilitation program. Two to four times a year, depending on the offense, would not be excessive. Domestic violence abusers who still threaten wives or girlfriends upon their release from prison could be monitored with radio bracelets as to their whereabouts.

4. HEALING - There are numerous things that can be done to promote healing for perpetrator, victim and society alike. Mandatory counseling, support groups, physical and mental examinations, report of crimes, monitoring systems, returns to prison, revocation of rights and privileges garnered for good behavior if violated, emphasis on research of criminal behavior and anti-social tendencies as well as organic dysfunction. Sociopaths are extremely difficult to treat however, many of them would cooperate with any attempts to understand their behavior.

5. PREVENTION - What all of this is about is prevention. So how do we prevent crime and protect the public in the best possible way we can? We prevent by identifying and recognizing symptoms, signs and organic dysfunction. History tells us that many things being successfully treated today were once thought to be impossible or nearly impossible to treat. Witness alcoholism, drug addiction, epilepsy, depression, etc. Violent aggressive behavior, serial killers have yet to be well understood. The status of current research tells us that organic dysfunction as well as some other clues may be responsible. If we want to find answers, then further study and research is indicated - even mandatory.

The victim, too, must speak out

By PARI LE COURE

"Hate and discontent" are the feelings in the prison, as quoted to Bob Anez of the Associated Press, but these are the same feelings that put our inmates in prison. Interestingly, these same feelings are transferred to their victims. Prison is an ugly grand finale to a life of hate and discontent, but seeing a loved one placed in a grave, as the result of the "hate and discontent" by another, is also very difficult to live with.

The victims of crime always get the maximum sentence. Being placed in an 8-by-12 cell is very much like living forever without your loved one. You start each day surrounded by memories, discontent, sometimes hate, sometimes an aching pain inside you, but always with a deep and never-ending sorrow within you. Some of us stop feeling and just go through the motions of life, waiting out our sentences until our time on earth has ended. Others of us join self-help groups, some become crusaders, but all of us have to dramatically re-adjust our lives to live with the ongoing void the crime committed has left with us.

Once again, we are hearing about the criminals and the problems they face, but not the victims and all the obstacles they have to daily endure for the remainder of their lives. Victims are not as outgoing about sharing the daily agony they feel. To constantly relive those painful moments of when the crime was committed, as well as the months and years it may take to put the perpetrators in prison, is very hard emotionally and physically. There are deep scars left when a crime is committed, and in some cases by the very system we have put together to represent us. We have the U.S. Justice Department suing the state for the prisoners' "rights," we have the American Civil Liberties Union speaking out for the "rights" of the convicts, as well as many other special-interest groups working around the clock to represent the convicted. As a victim (friend and family become victims, as well) to the crime committed, you feel helpless, very lonely and unrepresented at a time when you need the most support.

As in every death announcement, all your friends and family are around for a while. Then, one by one, everyone's lives go back to the routine, except yours. It is natural to be frightened of the results of crime; it is very hard to find the words of consolation to give to someone who has been violated by crime, so out of helplessness we retract. The result is friends and families coping, without any understanding, with the loss and the continuing reminders of that loss during the investigation, the trial, during the sentencing and incarceration, before they can even begin the "normal grieving process."

Until we, the victims, become more vocal and learn to express the void crime has left in our lives, we will not be heard. It just may be that in expressing our pain more will be done to represent us; the unaffected will have a better understanding of the trauma we endure daily and be able to reach out to us without feeling so helpless. No one is without feelings of some kind and the criminals and representative groups may have a better understanding of our silent quest for justice and normalcy in our lives if we come forward.

If you are a "victim" to crime, please speak out. Our legislators need to hear from us now and our peers deserve to understand us better.

Pari Le Coure lives in Missoula.

Inmates earn no sympathy

By PHILIP A. FRANDSEN

Reading the article "Hard Time" has given me the occasion to make some queries.

First, what conditions should criminals receive? A lighthearted, activity-filled leisure atmosphere? No. Prison should be hard and I have no sympathy for the pillagers of mankind who live there. They have murdered, beaten and raped; they are thugs.

Second, is the Missoulian trying to make us feel sorry for these prisoners? How can I feel sorry for Tom Hernandez, a murderer? How can I feel sorry for Terry Langford, a death row prisoner who audaciously comments, "It's not the hotel that everybody thinks it is?" Or what about Marvin Jacobson, convicted of sexual assault multiple times?

The criminal may be defined as one who denies the right of life or the right of trust. The criminal achieves their status by the following methods: murder, denying a person's right to live; assault, destroying the trust of a person towards others; and rape, which also destroys the trust of a person.

The criminal denies the victim of his life and dignity as a human being. The act of the criminal is permanent and cannot be reversed by such trifling things as sums of money, penance, or time spent in the jails.

What should be done with the criminal? They should be confined from the rest of society and made to labor, producing goods for society. They do not have the right to demand freedom, leisure, income, or other rights given to the non criminal.

It's time for the press to stop the propagandism of making people feel sorry for the criminal. The criminal has no room for complaint. They deserve the punishment they have received and much more.

The Missoulian (and other presses, as well) should report crimes committed and promulgate harsh penalties; penalties worthy of the crime. I feel no sympathy, only disgust, towards the criminal. The people and press together must expose crime for what it is and punish criminals; we must move towards a securer life.

Philip A. Frandsen writes from East Missoula.

EXHIBIT 11
DATE 11/18/95
HB 69

AVP

Alternatives to Violence Project :

This is a multicultural organization of volunteers offering experiential workshops that empower individuals to liberate themselves and others from the burden of violence.

Our fundamental belief is that there is a power for peace in everyone, and that this power has the ability to transform violence.

AVP builds on a spiritual base of respect and caring for self and others, working both in prisons and with groups in the community.

Montana AVP
P.O.Box 5605, Missoula MT 59806
542-3658

WHAT KIND OF PROGRAM IS AVP?

An experiential program offering shared exercises that can help people change their lives.

A community program for all who would like to take part. Sometimes workshops feature specific community organizations like social service agencies, youth groups, or churches.

A prison program, helping inmates learn new skills and attitudes that lead to fulfilling and crime-free lives. In time, inmate trainers take major responsibility in prison workshops.

A program for everybody -- though founded by Quakers out of their belief in the inborn power for peace in everyone, it draws participants and trainers from all religions, races and walks of life.

An intensive learning experience in the form of three-day workshops (20 participants maximum) on these *three levels*.

(1) THE BASIC WORKSHOP

Step-by-step exercises, including role-playing, focus on primary conflict resolution skills. Main themes include:

Affirmation -- build self-esteem and trust.

Communication -- improve skills of listening and assertive expression.

Cooperation & community -- practice cooperative relations that can reduce competitive striving.

Creative conflict resolution -- get in touch with inner *transforming power* to resolve hostile or violent situations.

(2) THE ADVANCED WORKSHOP

People take the Basic only one time but the Advanced Workshops vary according to the themes the participants choose and they can be taken repeatedly. Themes from threatening and violent situations that may be the focus include:

Fear -- investigate hidden fears that usually underlie anger, jealousy and prejudice.

Anger -- look at personal situations that trigger your anger.

Communication -- develop ability to communicate in tense situations.

Stereotyping -- build awareness of stereotyping, bias and prejudice in everyday relations.

Power and Powerlessness -- help individuals to get in touch with their inner power and to understand external power sources and structures.

Forgiveness -- lay groundwork for true reconciliation and freedom from guilt.

(3) THE TRAINING FOR TRAINERS WORKSHOP

Begin by participating in the Basic Workshop. If you find that you would like to become a facilitator yourself, take this workshop, which focuses on team leadership methods and group process skills for presenting AVP exercises.

EXHIBIT 11
DATE 1-18-95
HB 69

HISTORY

BELIEFS & APPROACH

We believe there is in the universe a power able to transform hostility and destructiveness into cooperation and community, and to do justice among us. We believe that power is everywhere -- in us, in our opponents, in the world around us. We believe people can tune in to it and that, when we do, it enables us and our opponents to realize our birthright of peace and dignity.

We believe there are certain individual and group dynamics that permit tuning in to this power, and that these dynamics can be learned and used by all people everywhere to build more constructive lives and healthier societies. AVP is our way of sharing these beliefs and these dynamics in order to bring this about.

Ours is a process of seeking and sharing, and not of teaching. We do not bring answers to the people we work with. We do not have their answers. But we believe that their answers lie buried in the same place as their questions and their problems--within themselves. Our job is to provide a stimulus and a seeker-friendly environment for them to search for solutions within themselves.

People come to us with lifetimes of experiences behind them. We believe all this experience is valuable and it can be built on to make new lives. We try to draw out those experiences and to help people look at them. In doing so, we find ourselves in a constant process of learning.

The Alternatives to Violence Project began in 1975 in New York. An inmate group at Green Haven Prison was working with youth gangs and teenagers at risk but they were having difficulty communicating their message about the consequences of violence. They sought help from the Quakers to conduct a workshop for them.

This was so successful that requests were received for more, and AVP was born and quickly grew. AVP currently does hundreds of workshops each year in New York State Prisons.

It soon became evident that the program designed for prison inmates could be useful to everyone. Community people began to seek the AVP training, and workshops for the general public are now a regular part of the program.

The program has spread to many other states and countries. The newly formed international organization of AVP supports local branches with visitors, trainers' manuals, a newsletter, and national conferences.

Members of Missoula Friends Meeting (Quakers) organized Montana AVP in autumn 1992. After generous advice and visits from Washington State and New York State trainers, we now have Montana facilitators for all three levels of workshop.

We aim regularly to run prison and community workshops. Also, we hope to find, as other states often have, audiences for the regular or modified workshops among battered women, probationers, elementary pupils, teens at risk, and so forth. AVP also can serve as an impetus and resource to mediation programs in the community and in the schools.

FROM INMATE PARTICIPANTS

I realize now that my ego was assaulted when I committed the crime I'm here for now. If I would have rationalized things then I would not be here now. I won't forget what I have learned by you helping me to see this.

I had a great time and I didn't want it to end. It is almost like a big family losing their home and splitting up. . . . I learned a lot about myself.

Thank you for showing us how to divert our violent attitudes into a positive and peaceful outcome. . . . I looked inside of me and found a loving and caring me.

If there is such a thing as a miraculous change, than I can truthfully say that it was through AVP. I began to grow from a person filled with hate, anger and despair into a person who believes that he, too, is responsible for the protection, preservation and enrichment of humanity.

It repairs my heart, so I dare to be part of the community outside again and don't have to have a minimal lifestyle anymore due to a lack of trust. It prevents me from going insane inside prison, something I have been very worried about.

FROM COMMUNITY PARTICIPANTS

Most important learning: that TP [AVP's "transforming power"] can work not just in prisons or Central America but also in our everyday lives.

Thank you for the most impact-full weekend of my life.

AVP has been the basis of great growth and change in my life. It has helped me in my career and family life.

I liked the program and I got a great deal out of it. I know I will use it for the rest of my life. Thank you very much for what you have done to change my outlook on life.

Friends asked me why I attended an AVP workshop, since I didn't seem like a violent person. A lot of violence I carry is directed towards myself in the form of self-criticism. AVP is helping me see that and is helping me change.

FROM AN AVP TRAINER

I have seen an incest perpetrator turn his life around completely and go on to be instrumental in the healing of other incest victims through what was learned in AVP. It is powerful to see a person come to life in this process.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE

1/18/95

BILL NO. HB 69

SPONSOR(S) Rep. Fisher

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
John Connor	MT County Attys Assn	X	
Pari LeLoure	Missoula Victims	X	
MARIAN STEVENSON	HOBSON, Victim	X	
Suzanne Hall	Bozeman / Victim	X	
Odana Stevenson	Hobson Victim	X	
Sharon Stevenson	Hobson / Victim	X	
David Hemion	Mental Health Assoc.	✓	
GENE Kiser	MBCC	✓	
DAVE OHLER	Dept of Corrections	✓	
Marge Filer	Rep	X	
MATTHEW DALE	FRIENDSHIP CENTR of HELEN	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:visbcom.man

CS-14

REP. MOLNAR demonstrated his view on the distribution of the \$25 and questioned how much it would cost to collect it in the first place.

Mr. Ferriter said he understood the concern but he felt they were in a good position to collect the fee and his experience was, at this point in the process, a person would be trying to put their best foot forward. Based on the parole and probation supervision fee experience, they anticipate that they will collect 75% of this fee with a net gain of between \$22,000 - \$28,000 annually.

Closing by Sponsor:

REP. AHNER presented her closing remarks on HB 198 and urged the committee to understand the intent of the bill is to offset the costs of the parole officer but also to send a message to the offender for accountability and responsibility.

{Tape: 2; Side: A}

EXECUTIVE ACTION ON HB 69

Motion: REP. BOHARSKI MOVED HB 69 DO PASS.

Motion: REP. SOFT MOVED TO AMEND AS SUBMITTED BY THE DEPARTMENT OF JUSTICE. EXHIBIT 6

Discussion: Mr. MacMaster explained the amendments.

REP. SHEA asked why these amendments were not submitted when the bill was presented.

CHAIRMAN CLARK said he believed the request for the bill was sometime ago and then later when they drafted the bill they realized the need for the amendments.

REP. BOHARSKI questioned using the words, "may" and "disclose" on page 6, line 12 in regard to the presentence report.

REP. ANDERSON answered there might be a case where a victim does not want to discuss the contents of the presentence report.

REP. BOHARSKI wondered if the case would ever arise there the victim might want to see it and the prosecutor has the discretion to withhold it.

Vote: The motion carried unanimously 19 - 0 by voice vote.

Motion: CHAIRMAN CLARK MOVED TO AMEND PAGE 13, LINE 27 TO STRIKE "ONE-THIRD" AND INSERT "ONE-HALF."

Discussion: REP. KOTTEL opposed the amendment because part of their earnings go to pay child support as well as the requirement

to purchase various items and because of their costs for postage and correspondence with their families.

REP. MOLNAR asked how much the prisoners earn.

CHAIRMAN CLARK said that it varies depending on the job they hold at the prison.

REP. SMITH explained they earn anywhere from \$1.10 per day and up to \$6+ if they are in the industries program which then requires they pay their medical costs. There is a craft store from which they receive a commission when they sell their products. Some have significant accounts while others have small accounts.

CHAIRMAN CLARK said that some have SSI, workers' compensation and retirement benefits. Some are not financially strapped.

REP. MOLNAR observed that items like writing a book while in prison would not be included in their prison earnings. And he wondered where things like SSI would fall.

CHAIRMAN CLARK said he believed that is covered under another section of law passed previously prohibiting a prisoner from benefitting by the fruit of his crime. But he believed any money generated into their accounts during the time they are in prison is classified as prison earnings.

REP. DUANE GRIMES interpreted the bill and the amendment to mean the judge would have the discretion to set the amount. He would feel positive toward the amendment if the amount could be assessed up to one-half as the maximum.

REP. BOHARSKI asked if child support would already be taken out before this.

REP. KOTTEL believed there was no master list of priorities and the claims against prisoner earnings become unsecured creditors so whoever gets there first to attach the account is paid.

REP. GRIMES questioned if the discretion in paragraph 3 and also in subsection (c) allows for the consideration of those things before the court.

REP. KOTTEL said she thought that was correct and a hearing is held to make the adjustments.

REP. MC CULLOCH reminded the committee that the one-third figure came out of the Uniform Crime Victims Act and asked if that is a federal act.

CHAIRMAN CLARK said he believed that it is the Montana crime victims' fund.

REP. MC CULLOCH asked if the one-third figure refers to something that is already on the books.

CHAIRMAN CLARK replied that this was new language.

REP. KOTTEL remembered it was a model victims compensation act which was drafted for states to follow.

Vote: The motion failed by roll call vote 9-9.

Motion: REP. MOLNAR MOVED TO AMEND SECTION 4 BY INSERTING, "AN ADULT CONVICTED OF A FELONY MAY NOT DISCHARGE HIS RESTITUTION OBLIGATIONS THROUGH THE PERFORMANCE OF COMMUNITY SERVICE."

Discussion: REP. BOHARSKI stated his understanding of the effect of the amendment would be that even though the court can require community service this community service work would not reduce the amount of restitution owed to the victim.

REP. MOLNAR said that was correct. This would cover the case of someone becoming able to make restitution at a later date.

REP. KOTTEL said the effect would be to have a lifetime obligation.

REP. GRIMES asked if other parts of the proposed bill would have to be changed to reflect this amendment.

Mr. MacMaster said he did not know and would have to compare it with the current law that isn't in the bill to see what kinds of amendments and wording would be required.

Vote: The motion carried unanimously 19-0.

Motion: REP. ANDERSON MOVED HB 69 DO PASS AS AMENDED.

Discussion: REP. MOLNAR recalled a concern he had during the hearing that the obligation could be discharged through bankruptcy. Looking under statute, he believed the obligation is actually to the state and he was concerned that if the state chose not to pursue the obligation, the person to whom it is owed would never receive their money. He wanted to include wording to the effect that the obligation is to the victim and is not to the state itself and is not dischargeable through bankruptcy and the victim can take action even if the state is hesitant to.

REP. KOTTEL said it would be enough to add language that the debt is not dischargeable in bankruptcy.

Mr. MacMaster said he would have to have time to think about it though it sounds reasonable offhand.

REP. BOHARSKI believed this committee in the past had made conceptual amendments whereby the language was clarified after the committee agreed to them and acted on the bill.

CHAIRMAN CLARK asked REP. MOLNAR if he would agree to a conceptual amendment.

Motion/Vote: REP. MOLNAR MOVED THE CONCEPTUAL AMENDMENT WHICH WOULD INTEND THAT THE DEBT IS NOT DISCHARGEABLE THROUGH BANKRUPTCY AND IT IS OWED TO THE PERSON AND NOT TO THE STATE AND THEY COULD MOVE ON IT IN THE LIFETIME OF THE PERPETRATOR. The motion carried by a unanimous vote 19 - 0.

Motion/Vote: REP. ANDERSON MOVED HB 69 DO PASS AS AMENDED. Motion carried unanimously 19 - 0.

Motion: REP. BOHARSKI MOVED TO ADJOURN.

{Comments: This set of minutes is complete on two 90-minute tapes.}

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 1/19/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓ <i>late</i>		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		



HOUSE STANDING COMMITTEE REPORT

January 21, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 69 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 7.
Following: "SECTIONS"
Insert: "27-2-201,"

2. Page 6, line 12.
Strike: "discuss"
Insert: "disclose"

3. Page 6, line 13.
Strike: "with"
Insert: "to"

4. Page 8, lines 24 and 25.
Strike: "If" on line 24 through end of line 25

5. Page 11, lines 22 through 25.
Strike: subsection (3) in its entirety

6. Page 14, line 3.
Strike: "officer of the board of crime control,"

7. Page 14, line 4.
Following: "payment."
Insert: "If the victim has received compensation under Title ~~III~~
chapter 9, the court may also order an employee of the ~~board~~
of crime control to supervise the making of restitution ~~and~~"

Committee Vote:
Yes 19, No 0.

1809135 ~~11~~

to report to the court any default in payment."

8. Page 27, line 8.

Following: line 7

Insert: "Section 39. Section 27-2-201, MCA, is amended to read:

"27-2-201. Actions upon judgments. (1) Except as provided in subsection subsections (3) and (4), the period prescribed for the commencement of an action upon a judgment or decree of any court of record of the United States or of any state within the United States is within 10 years.

(2) The period prescribed for the commencement of an action upon a judgment or decree rendered in a court not of record is within 5 years. The cause of action is considered, in that case, to have accrued when final judgment was rendered.

(3) The period prescribed for the commencement of an action to collect past-due child support that has accrued after October 1, 1993, under an order entered by a court of record or administrative authority is within 10 years of the termination of support obligation.

(4) An action under 46-18-247(3) to enforce an order of restitution entered by a court of record may be commenced at any time within the offender's lifetime during which restitution remains unpaid."

Renumber: subsequent sections

-END-

1-23-95
mm

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 1-19-95 BILL NO. HB 69 NUMBER

MOTION: Amend Page 13, Line 27, strike "one-third" and
insert "one-half."

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority	✓	
Rep. Diana Wyatt, Vice Chairman, Minority		✓
Rep. Chris Ahner		✓
Rep. Ellen Bergman		✓
Rep. Bill Boharski	✓	
Rep. Bill Carey		✓
Rep. Aubyn Curtiss		
Rep. Duane Grimes	✓	
Rep. Joan Hurdle		✓
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Brad Molnar	✓	
Rep. Debbie Shea		✓
Rep. Liz Smith	✓	
Rep. Loren Soft	✓	
Rep. Bill Tash	✓	
Rep. Cliff Trexler		✓

Amendments to House Bill 69
First Reading Copy

Requested by Department of Justice
Prepared by
Beth Baker, Department of Justice

1. Title, line 7.
Following: "OFFENDER;"
Insert: "PROVIDING THAT AN ACTION TO ENFORCE A JUDGMENT OF RESTITUTION MAY BE BROUGHT AT ANY TIME DURING THE LIFETIME OF THE OFFENDER;"
Following: "SECTIONS"
Insert: "27-2-201,"
2. Page 1, line 16.
Following: line 15
Insert: "Section 1. Section 27-2-201, MCA, is amended to read:
"27-2-201. Actions upon judgments. (1) Except as provided in ~~subsection~~ subsections (3) and (4), the period prescribed for the commencement of an action upon a judgment or decree of any court of record of the United States or of any state within the United States is within 10 years.
(2) The period prescribed for the commencement of an action upon a judgment or decree rendered in a court not of record is within 5 years. The cause of action is considered, in that case, to have accrued when final judgment was rendered.
(3) The period prescribed for the commencement of an action to collect past-due child support that has accrued after October 1, 1993, under an order entered by a court of record or administrative authority is within 10 years of the termination of support obligation.
(4) An action brought under 46-18-247(3) to enforce an order of restitution entered by a court of record may be commenced at any time within the offender's lifetime during which the restitution remains unpaid."

Renumber: Remaining sections

3. Page 6, line 12.
Following: "may"
Strike: "discuss"
Insert: "disclose"
4. Page 6, line 14.
Following: "report"
Strike: "with"
Insert: "to"
5. Page 14, line 3.
Strike: "officer of the board of crime control"

(over)

6. Page, 14, line 4.
Following: "payment."
Insert: "In cases where the victim has received compensation under Title 53, chapter 9, the court may also order an officer of the board of crime control to supervise the making of restitution and to report to the court any default in payment."
7. Page 23, line 12.
Following: "[section"
Strike: "36"
Insert: "37"
8. Page 24, line 29.
Following: "[section"
Strike: "35"
Insert: "36"
9. Page 24, line 30.
Following: "[section"
Strike: "36"
Insert: "37:"
10. Page 25, line 3.
Following the first "[section"
Strike: "35"
Insert: "36"
Following the second "[section"
Strike: "36"
Insert: "37"
11. Page 25, line 6.
Following the first "[section"
Strike: "35"
Insert: "36"
Following the second "[section"
Strike: "36"
Insert: "37"
12. Page 27, line 10.
Following: "[Section"
Strike: "3"
Insert: "4"
13. Page 27, line 12.
Following: "[section"
Strike: "3"
Insert: "4"
14. Page 27, line 13.
Following: "[Section"
Strike: "20"
Insert: "21"

15. Page 27, line 14.
Following: "[section"
Strike: "20"
Insert: "21"
16. Page 27, line 15.
Following: "[Sections"
Strike: "35"
Insert: "36"
Following: "through"
Strike: "37"
Insert: "38"
16. Page 27, line 16.
Following: "[sections"
Strike: "35"
Insert: "36"
Following: "through"
Strike: "37"
Insert: "38"
17. Page 27, line 23.
Following: "[Sections"
Strike: "10, 13"
Insert: "11, 14"
Following the first "and"
Strike: "21"
Insert: "22"

criminal mischief. If an 18 year old sets fire on two occasions under the influence of alcohol to something of a minor value, and then does something similar a third time there is still the option of charging some of those offenses as criminal mischief if you do not want that person faced with a life term. If it doesn't seem appropriate to send this person away for life, there are charging options available. The concern of the fire marshall is that the crime of arson is potentially dangerous to life. That is what sets this apart from criminal mischief.

Closing by Sponsor:

REPRESENTATIVE SIMON commented that charging someone with arson and proving the act of arson is a very difficult process. To be able to charge someone with arson three different times and prove it in a court of law three different times is going to be a very difficult process. The court would have the option of charging these offenders with criminal mischief.

HEARING ON HB 69

Opening Statement by Sponsor:

REPRESENTATIVE MARJORIE FISHER, House District 80, Whitefish, presented HB 69, the victim's rights bill. This bill will give victims access to information, names and phone numbers of the prosecutor and investigating officer, the crime charge, the date, the time and location of the proceedings, the appeal or postconviction proceedings by the offender and the release, escape, parole or pardon of the offender. It will give consideration to the victim's interest. It will recognize rights of the victim and restoration of their loss as part of the correctional policy of the State of Montana. It will clarify that victim impact statements must be allowed by the sentencing judge at the time of sentencing; by the sentencing judge in death penalty sentencings; by the parole board when considering an offender's parole eligibility and by the court or parole board when considering an offender's request to reduce or waive restitution. It requires consideration of the protection of the victim by the courts when imposing restrictions on the offender and by the court before allowing a sex offender who assaulted a child to be treated in a community setting. It will require that restitution be imposed as a condition of any sentence. It will allow restitution to be satisfied by forfeiture of the offender's assets, return of property to the victim, payment of 1/3 of prison earnings and services provided to the victim or other designated person with the victim's consent. It will also provide lifetime restitution. It will increase some compensation to the victim's funeral benefits to \$3500 and secondary victim for mental health treatment to \$2000.

Proponents' Testimony:

Joe Mazurek, Attorney General, spoke in support of HB 69. Protection of crime victims must be an integral part of the criminal justice system of this state. Often victims are forgotten or lost in the technicalities of the criminal justice system. This bill recognizes that they deserve better than that. Since 1985 there has been a basic crime victim's rights section. Victims still do not get information. Restitution opportunities are limited as a result of a Supreme Court decision. This bill requires restitution as a condition of sentencing. This bill was an effort of the Montana Board of Crime Control which set up a task force to study a number of issues relating to victims rights. State v. Brown was handed down by the Supreme Court in 1994. This case involved two women who were struck in a crosswalk in Whitehall by three teenage boys who were racing down a street after leaving a bar. One woman was killed and the other was seriously injured. As a result of that case, the defendant was sentenced to 30 years. Ten years were suspended. The court ordered restitution; however, the Supreme Court ultimately determined restitution could not commence until after the suspended sentence had been served. It also stated there had not been findings of a determination of the amount of liability the defendant should have been required to pay. It acknowledged that restitution was not considered a part of the correctional policy of this state. This bill addresses the concerns which were raised in that decision. One of the responsibilities his office is assuming under this bill is to prepare pamphlets and information for local law enforcement agencies which outline what is necessary in terms of providing notice to victims of crime.

Gene Kiser, Director Montana Board of Crime Control, presented his written testimony in support of HB 69, EXHIBIT 1.

John Connor, Montana County Attorneys Association, commented that they worked on the review of this bill while it was being drafted to offer some perspectives from the standpoint of the prosecutor and the impacts this bill may have on the prosecution of criminal cases. The concern of the prosecutor is that, while they willingly provide information to victims in crime, they also need to be concerned about preserving and protecting the integrity of the case. Although the bill provides that the prosecutor can provide criminal justice information to crime victims, such as police reports and things of that nature, they would not want to do so if it would impact upon the credibility of the witness in trial. If the witness was an eyewitness victim to the crime, providing police reports would impeach that persons credibility on testimony. They believe this bill contains adequate protections in that regard. The bill requires that prosecutors do more than they are doing now. Open and frank communications with crime victims makes the prosecutor's job easier. When victims are informed, they want an effective prosecution of the case. Restitution is a large part of the bill. They handle

violent crime prosecutions and victims couldn't care less about restitution. In a homicide case, they have lost everything of value to them. What they do want is an opportunity to be told what is going on in the case. The defendant and prosecutors know what is going on the case. Victims are entitled to the same kind of information.

Jane Bernard, Interdepartmental Coordinating Committee for Women, presented her written testimony in support of HB 69, EXHIBIT 2.

Robert Anderson, Administrator of Special Services Division, Department of Corrections and Human Services, spoke on behalf of the Governor's Office and the Department in support of HB 69.

Jim Oberhofer, Montana Chiefs of Police Association, urged support of HB 69.

Kathy McGowan, Montana Sheriffs and Peace Officers Association, commented this bill has been a high priority for them. In her sixteen years as the Citizen's Advocate in the Governor's Office, she saw a real need for enhancement in this area. She worked closely with victims. There was not enough information for victims.

Marian Stevenson presented her written testimony, EXHIBIT 3.

David Henion, Mental Health Association, commented that one section of this bill would improve the reimbursement for mental health counseling and therapy for victims from a minimal amount of \$500 to \$2000. The bill also allows greater flexibility for reimbursement for counseling for secondary victims of sexual assaults. This allows therapists to work with family members in restoring the whole family to health.

Mathew Dale, Executive Director of the Friendship Center of Helena, commented they provide shelter and related services to victims of domestic violence in Lewis and Clark, Jefferson and Broadwater Counties. Last year they served 292 battered women and the 271 children they brought with them. This was an increase of 33% in the number of adults and a 19% increase in the number of children over one year ago. They see approximately 25 new battered women each month. Domestic violence is a crime which occurs in secret behind closed doors. This bill attempts to replace the secret, tightly controlled environment the victim has been living in. This bill, by advocating information, bridge building, and open dialogue, assertively seeks to reverse those patterns. Police, judges and attorneys can unintentionally mimic the "you don't need to know and I'm not going to tell you" system the victim is attempting to leave. While the information is frequently withheld with the best of intentions, it still places the victim outside the loop and can revictimize them. This bill will keep the victim informed. It seeks their input and gives them a voice. In responding to and prosecuting domestic violence cases, knowledge is power. Taking control and

becoming involved is an aspect of recovery for a victim. The bill also expands coverage of the victim assistance program. The saddest news to give a victim or their family is that there is money available to help, but they do not qualify because of circumstances outside of their control. This is currently the case for secondary victims of child sexual abuse. As it stands, a person must be charged before funds are made available to secondary victims for mental health counseling. Frequently the first decision an abused person must make to leave is the most difficult. The next big decision is whether to press charges to prosecute and this is where the criminal justice system comes into play. Montana has a history of supporting all aspects of what it takes to help people leave and recover from violent situations.

Beth Baker, Department of Justice, commented there are three primary functions of the bill. The first is to provide crime victims with better access to information about the criminal justice system and the proceedings involved in the case. The sections which address this purpose include the first two sections of the bill; however, the bulk of the access sections are in sections 29-37 of the bill. Most of these sections are in current law which is being expanded to clarify what information is going to be given to the victim and who is going to give the victim that information. The new sections are taken from the Uniform Victims of Crime Act which was adopted in 1992 by the National Commission on Uniform State Laws. That would include sections 35 and 36. This will include notice of appeal or postconviction remedies to the victim and also information concerning confinement which will be provided by the Department of Corrections and Human Services or the Board of Pardons as applicable. In terms of notice, it is important to recognize that section 37 says that the notice may be satisfied by either written or oral communication. There are no formal requirements that the local authorities will have to follow. The person who is providing the information is also required to give updates of significant changes. The obligation to furnish information to a victim is conditioned on the victim's responsibility to inform the prosecutor or the department that they want notice of this so that there is always a current address on file and the notice can be given to the appropriate person. The restitution provisions are the most important aspects of this bill. Under current law, a judge may order restitution only if there is some aspect of the sentence that is suspended or deferred. If the defendant gets a straight prison term, the judge cannot order any restitution. That is being changed by requiring restitution to be imposed as a condition of every sentence. If the judge defines that the defendant will not have the ability to pay, it would allow the judge to order community service as an option in the judge's discretion. The primary aspects of restitution are addressed in sections 13-20. The additional mandatory nature of restitution is on page 8, line 22. Section 16 addresses other ways in which restitution can be satisfied. This allows forfeiture of the defendant's assets. This would include return of property to the

victim and payment to up to 1/3 of prison earnings. With the consent of the victim and in the discretion of the court, the defendant could perform services in lieu of money. This could apply to a defendant painting a fence which was damaged, if there was no money available. She also referred to the fact sheet which was provided to the committee, EXHIBIT 4. The amendment which was made in the House at their request allowed lifetime restitution. It is now in Section 39 of the bill. This amends the code of civil procedure to allow an action to be brought at any time during the offenders lifetime to enforce an order of restitution. Section 19, page 15, lines 10-12 states that an order to pay restitution, even under current law, constitutes a judgment in favor of the state and following default the sentencing court may order the restitution to be collected by any method authorized for the enforcement of other judgments. By amending the civil code to allow this action to be brought at anytime during the offenders lifetime, it allows lifetime restitution without burdening the correctional system by requiring that the offenders be supervised for life.

Opponents' Testimony: None

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR BARTLETT, referring to the definition of "victim" as the estate of a deceased or incapacitated victim or a member of the immediate family of a homicide victim, asked Mr. Connor if there needs to be a choice made that either the estate or a member of the immediate family qualify as "victim".

Mr. Connor stated that he believed that language to mean that if there are no members of the immediate family of the deceased victim, then whatever the estate might be is the entity to which they are communicating. It is not an alternative. It is there to cover different types of situations.

SENATOR BARTLETT asked what the procedure would be if both types of situations obtain in a single case.

Mr. Connor stated that as a practical matter, they would communicate with the family members who are most directly affected. The children, spouse, or parents are the ones who want to know. They ask the family members who should be provided the information. This would also be the people who represent the estate of the deceased.

SENATOR BARTLETT, referring to the restitution section which involves forfeiture of the offender's assets, asked what would take priority if the crime were a drug offense, since there are forfeiture requirements for property acquired by drug offenses to

go to law enforcement agencies. How would the rights of victims interplay with property acquired through drug actions?

Mr. Connor commented that he couldn't think of a situation where that occurred. In drug prosecutions, the cases they deal with are ones in which a person is involved in the business of selling drugs to make money and they sell the drugs to an undercover officer or undercover operative working for the police. In the process of prosecuting that case if there is a forfeiture of property, the statute requires that it be given to the law enforcement agency most directly involved in it for use in education and law enforcement purposes.

SENATOR BARTLETT, in referring to the fiscal note, stated the Crime Control Division projected a need for a .5 FTE and 1 FTE. She asked what the source of those funds would be and what the status of that budget request is.

Mr. Kiser stated the source of the funds would be from the fines and forfeitures set aside for crime victims. Part of this, 9%, would come out of the special account.

SENATOR BARTLETT, referring to the source of the funds and the various purposes, asked if the additional people would reduce the amount which would be available for direct assistance to crime victims.

Mr. Kiser stated that in the past some of those funds have been reverted at the request of the legislature because they had not been used.

SENATOR NELSON asked how the restitution is monitored when it is a lifetime opportunity? Who monitors it?

Ms. Baker commented that currently the restitution has to be ordered by the judge at the time of the sentencing. It will be investigated as part of the presentence investigation report. The bill would expand on what the presentence report would have to include which is documentation of any pecuniary loss sustained by the victim. It must be ordered at the time of the sentencing. It carries forward as part of the sentence with the defendant. While the defendant is under state supervision, he is obligated to pay that restitution. It is supervised by the probation or parole officer. The bill clarifies that if restitution is ordered as part of the sentence, it must be imposed as a condition of any parole as well. It will follow him while he is under state supervision. Once the period of state supervision ends, the criminal justice system has no more ability to enforce that against the defendant. The order continues as a judgment in favor of the state. The state can sue to enforce the judgment in civil court. Section 39 allows that action to be brought at any time during the offenders lifetime. Currently, it would be limited to ten years from the date of judgment. The final option the victim has is to bring a civil action on the victim's own

behalf against the offender. Restitution is limited to specific damages, such as medical bills, and would not include damages for pain and suffering which might be allowed in a civil case.

CHAIRMAN CRIPPEN asked if the forfeiture sections provided for a hearing?

Ms. Baker commented that page 13, line 26, provides that forfeiture may be allowed unless the court finds after notice and an opportunity for the offender to be heard This would contemplate a hearing. The only thing this bill specifies is that the offender must have notice and opportunity to be heard.

CHAIRMAN CRIPPEN stated that his concern was with constitutional problems. He also asked why oral communication would be satisfactory for giving notice?

Ms. Baker stated they plan to provide prosecutors and law enforcement with a pamphlet which will have in writing all of the standard information in terms of the criminal justice process. In terms of trial dates, hearing dates, etc., many times it will have to be sufficient for the prosecutor's office to call the victim regarding changes in dates.

SENATOR LORENTS GROSFIELD asked if leaving a message on an answering machine would be oral communication?

Ms. Baker stated that live communication would be necessary for anything significant. The victim is supposed to inform the appropriate official of name, address and telephone number.

CHAIRMAN CRIPPEN stated that the pamphlet they are providing should state that they should follow up with written notice, even if this is after the fact.

Closing by Sponsor:

REPRESENTATIVE FISHER commented that instead of adding another FTE, they might contract the services.

HEARING ON HB 179

Opening Statement by Sponsor:

REPRESENTATIVE GARY FELAND, House District 88, Shelby, presented HB 179 which provides that an escapee can be charged in any county other than the county in which the escape occurred. The county attorney would be able to file the charges in Deer Lodge rather than taking the inmate back and forth between counties.

HB 69: REVISE CRIME VICTIMS' LAWS**SPONSOR: REPRESENTATIVE MARJORIE FISHER**

Testimony: Gene Kiser

Montana Board of Crime Control

444-3604

The Montana Board of Crime Control is the state agency responsible for the administration of the Crime Victim Compensation Act of Montana and the Victims of Crime Act funds. Additionally, the Board will assume administrative responsibility for the Violence Against Women Act funds that will be coming to Montana during the coming fiscal year. These funds will be used to provide monetary assistance to local law enforcement and prosecution in developing and implementing more effective policies and services for preventing and responding to violent crimes.

The Board has direct contact with victims through the Crime Victim Compensation program.

This program provides assistance to victims who have been injured as the result of criminal act.

Direct contact with victims on a daily basis has provided us with insight into the trauma and difficulties victims face. We believe that the sections enumerated in HB 69 address many of the /problems currently encountered by victims in the criminal justice process. It also allows crime victims to receive compensation for funeral expenses in cases of homicide and mental health for secondary victims in cases of child sexual assault.

Because of my 30 years experience in law enforcement in the largest metropolitan area in the state, I have witnessed first hand the frustration and anger victims express due to the inadequacies and failures of the criminal justice system. Victims, traumatized by the crime itself are further victimized by being cast into an unfamiliar, impersonal criminal justice system replete with long-standing barriers. It is critical victims be informed of and included in the criminal justice proceedings by taking an active role in the process thus restoring their faith in the system.

When victims are given the opportunity to be involved in their own case they are often more cooperative and this allows them to regain some control of their lives.

EXHIBIT 1
DATE 3-1-95
FILE HB 69

Too many times the criminal justice system is accused of focusing more attention on the rights of the accused to the exclusion of the rights of the victim. This bill will allow the concerns of the victims to be brought into the process in a more comprehensive manner than ever before.

Many of the barriers victims face will be addressed and corrected with the passage of HB 69.

The Board of Crime Control supports this legislation.

Thank you.

Interdepartmental Coordinating
Committee for Women

ICCW

SENATE JUDICIARY COMMITTEE

COMMIT NO. 2

DATE 3/1/95

SEN. NO. HB 69

March 1, 1995

TO: SENATE JUDICIARY COMMITTEE
Senator Bruce Crippen, Chair

CONTACT: Jane Bernard

SUBJECT: House Bill 69

Mr. Chairman, members of the committee, for the record my name is Jane Bernard and I represent the Interdepartmental Coordinating Committee for Women, known as ICCW. ICCW is in existence by Executive Order of the governor to create positive change for all state employees by promoting the full participation of women at all levels in state government.

ICCW urges your support of House Bill 69. The purpose of this legislation is to provide victims of crime with better access to information about the criminal justice system and the proceedings involved in the case; to require consideration of the victim's interest at critical stages in the proceedings; and to require restitution payment whenever the victim has sustained pecuniary loss and the offender has the ability to contribute something to the payment of restitution.



ICCW supports HB 69 because of its impact to state employees. Many of us are placed in dangerous situations due to the nature of certain employment positions. The murder of Walter Sullivan, auditor for Department of Labor, represents our case in point. Not all state employees have the working knowledge of the judicial system. Like other private citizens, we would frequently benefit from assistance in dealing with the criminal justice system - particularly after being victimized.

March 1, 1995

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 3/1/95
FILED IN HB 69

HB 69 Senate Judiciary Committee Hearing

Mr. Chairman; members of the committee;

My name is Marian Stevenson. I'm from Hobson, Montana, Judith Basin County.

I am speaking only about the portion of HB 69 regarding access to information, although I believe the complete bill is also a step in the right direction in providing some measure of protection for victims and in providing restitution in cases where restitution is possible.

On March 27, 1994 my life ended. My husband, Wayne Stevenson was murdered. He was ambushed from the dark and shot six times by an employee on our central Montana ranch.

In the past 11 months I have learned more than I ever wanted to know about the criminal justice system. The inequity of access to information soon became apparent to me. When an arrest is made it seems the law is heavily weighted towards the rights of the defendant. Victims or their families are often denied information that is available to prosecuting and defense attorney's and to the defendant.

We are fortunate here in Montana to have many people in law enforcement and investigation and prosecution who are caring, compassionate and dedicated to doing their jobs in a competent and professional manner.

Assistant Attorney General John Connor and his staff were very careful to keep me informed about what they could regarding the case. Some attorneys are not that considerate.

I can only imagine how horrible it would be to open a newspaper or turn on the radio or TV and in that manner learn of a bail hearing or other court proceeding being scheduled.

I believe this legislation and the victims rights that it insures is necessary.

Wayne and I were married for 34 1/2 years. We lived together, loved together, worked together; shared our lives completely and I feel it should be my right to be informed about what happened, how it happened, and to be made aware of all legal proceedings. I did not want to be protected from the horrible details. This crime was done to me as well as to my husband. Wayne's life was stolen from him by a brutal, senseless act and my life with him was destroyed.

A question I had early on was--how did my husband die? Having shared our life together so completely I was in agony not knowing what happened in his last moments. Since the only living witness was the defendant and he was not talking--I asked the authorities if they could explain to me what the evidence indicated had taken place. It was important to me to know as much as possible about what had happened. I feel very strongly that this should be a right available to victims.

In our case the defendant entered a guilty plea shortly before the trial was set to begin. At that time the judge ordered a pre-sentencing report. This report is done by a probation officer. In the course of his investigation for this report, the defendant was interviewed; I was interviewed; I believe the defendants wife and possibly others were interviewed.

We were informed that family and friends could write letters or written statements to the court expressing their opinions and comments on the case. Many family members and friends did so. This report was given to the judge and the sentence he handed down was based on this report along with verbal testimony given at the sentencing and on information from previous court proceedings.

This pre-sentencing report is made available to the Judge; to the prosecuting attorney; to the defense attorney and to the defendant; but it is withheld from the victim. I was told that this is a sealed document and could be released to me only by orders of the judge after the sentencing had taken place.

The judge denied our request for release of this information. In the judge's comments regarding the denial he indicated he wished to spare us further pain and we should cherish the good memories.

What could be in this report that could possible cause us any more pain then we have already been through? Why should someone else decide what we can or cannot know about this crime that has destroyed our lives?

Only Mr. Connor's assurance that he would willingly release the report to me if he could legally do so keeps me from imagining that there must be something terrible contained within it. Why can the defendant see this but not the victim?

I hope that by letting you see a glimpse of our pain, and what we have endured you will have gained some insight into part of what a victim goes through, and that you will give careful consideration to this proposed legislation.

Thank you,

Marian Stevenson

Marian Stevenson

SENATE JOURNAL
SENATE NO. 4
DATE 3/1/95
BILL NO. HB 169

**DEPARTMENT OF JUSTICE
MONTANA BOARD OF CRIME CONTROL
House Bill 69: Victims' Rights**

Purpose

- To provide victims of crime with better access to information about the criminal justice system and the proceedings involved in the case
- To require consideration of the victim's interest by the courts and the parole board at critical stages in the proceedings
- To require payment of restitution whenever the victim has incurred monetary loss and the offender has the ability to contribute something to the payment of restitution

Background

Montana law currently provides for services and compensation to victims of crime, and allows a court to order restitution in some cases. However, the criminal procedure code does not expressly recognize that the protection of crime victims is part of the correctional policy of the state, and restitution is limited to cases in which a deferred or suspended sentence is imposed. Our laws governing the treatment of crime victims are good, but experience has shown room for improvement.

Provisions

► *Access to Information:*

Requires notice to victims of felony and violent misdemeanor offenses of:

- name and phone number of prosecutor and investigating officer
- the process for obtaining a protective order from a court
- the crime charged
- date, time, and location of all court proceedings
- appeal or post-conviction proceedings pursued by the offender
- release, escape, parole, pardon or death of the offender

Allows the prosecutor to discuss with the victim investigative information and contents of the presentence investigation report.

Requires that victim be allowed to attend pretrial proceedings that are closed to the public unless exclusion of the victim is necessary to protect the fairness of the trial or the victim's safety.

► *Consideration of Victim's Interest:*

Recognizes protection of victim and restoration of victim's losses as part of the correctional policy of the state.

Clarifies that victim impact statements must be allowed:

- by the sentencing judge at time of sentencing
- by the sentencing judge in death penalty sentencing hearings
- by the parole board when considering an offender's parole eligibility
- by the court or parole board when considering an offender's request to reduce or waive restitution

Requires consideration of the protection of the victim:

- by the court when imposing restrictions on an offender as part of the sentence
- by the court before allowing a sex offender who assaulted a child to be treated in a community setting
- by the court before ordering conditional discharge of a probationer from supervision before expiration of the sentence
- by the parole board before ordering conditional discharge of a parolee from supervision before expiration of the sentence

Prohibits an employer from discharging a victim or a member of the victim's family for participating in criminal proceedings at the prosecutor's request.

► *Payment of Restitution:*

Requires that restitution be imposed as a condition of any sentence if the victim has sustained pecuniary loss; allows the court to impose community service if, due to circumstances beyond the offender's control, the offender is unable to pay.

Allows restitution orders to be enforced during the lifetime of the offender.

Allows restitution to be satisfied by:

- forfeiture of the offender's assets
- return of property to the victim
- payment of up to 1/3 of prison earnings
- services provided to the victim or other designated person (with victim's consent)

Requires that restitution be imposed as a condition of parole if part of the original sentence.

Requires allocation of payments made by the offender to give first priority to restitution:

- 50% of all money collected from the offender is applied toward restitution until fully paid
- the other 50% is applied toward other fines and costs ordered by the court

► *Victims' Compensation:*

Increases allowable funeral and burial benefits to \$3,500

Increases benefit to secondary victim for mental health treatment to \$2,000

DATE 3-1-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB69 ; HB46 ; HB179 ;
HB177

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
GENE KISER	MBCC	HB69	✓	
John Connor	Mont County Attys Assn	HB46 HB69	✓	
John Connor	" " " "	HB177 HB179	✓	
JIM OBERDORFER	Post Council	HB 69	✓	
MARIAN STEVENSON	SELF	HB 69	✓	
Sharon Stevenson	SELF	HB69	✓	
JANE BERNARD	I. C. C. W	HB69	✓	
KATHY McGOWAN	MSPOA	46, 69, 177	✓	
Matthew Cole	Friendship Cntr of Helen	HB69	✓	
Tim BERGSTROM	MT ST. FIREMENS ASSOC	HB 46	✓	
Randy Vogel	3rd Police Dept	HB46	✓	
James Larson	Bigs Fire Dept	HB46	✓	
Paul Barber	Billings Fire	HB46	✓	
Dan Marshall	City of Helena	HB177		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppo
H.A. COAN	SUPREME COURT	HB 177		✓
JAMES A LOFTOS	MT FIRE DIST ASSN	HB 46	✓	
Troy Mc Gee	MT Police Assoc. MT Chiefs Assoc	HB 69 + 46 HB 177	✓	
Bob Gilbert	MT Magistrates Assoc	HB 177		✓
Doug Harkin	District Judge	177		✓
George CORN	Rawlley County, ^{Court} Attorney	177	✓	
David Hemion	Mental Health Assoc	HB 169 HB 169	✓	
Lee R. Yen	Lawyer County attorney	HB 177	✓	
Robert Anderson	DCHS / GOV OFFICE	HB 69 HB 177	✓	
Sharon Bakenson	HACRM	HB 177 HB 69	✓	
JOE ROBERTS	MT. CTY. ATTY. ASSOC.	HB 177 HB 179	✓	
James Kembel	City of Billings	HB 69		✓
Charles R. Brooks	Yellowstone County	HB 177	✓	
Gordon Morris	MAlo	HB 177	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

SENATOR HALLIGAN said he thought it was a good hearing, praising both sides of the argument. He said that the legislature had passed in 1989 the bottom of page 3, Subsection 5, that cities, towns and counties can adopt ordinances more strict than the State law. He voted for it, he said. He recognized that a statewide standard isn't something that was appropriate at the time. He said when they talked about the invasions of "big government," they had to make it mean something when they passed the law, whether it was passing morality, as in this case, or other things. He said they had already granted local control if that is what the communities wanted and they had also allowed for strong zoning laws for bookstores and adult stores. They had passed strong criminal laws dealing with sex offenders. He said he had young sons which he would have to inculcate or somehow develop their understanding of what is appropriate conduct. He said it was his responsibility and that of his wife, his family, his neighborhood and his community. He hoped the bill would stay with the 1989 law and the intention of local control. SENATOR HALLIGAN stated that the broader language with the "average person" applying contemporary standards would cause inconsistency in the application of this law and would have a chilling effect. He said he strongly agreed with local controls, but it was not appropriate with this forum. SENATOR HOLDEN stated that he comes from the largest senate district, covering five counties. He said no one talks about obscenity or abortion. He had never been asked about either in a candidate forum. But he said the people in his district knew what was right and what was wrong. It upset him that some people on the committee wanted to defend pornography and defend a person's right to take a picture of a lady chained up and call it justice. He said he would vote for the bill and the people in his district would not say a word. Local ordinances would not speak to those types of things, he said.

Vote: REVERTING TO THE ORIGINAL MOTION BY SENATOR HALLIGAN THAT HB 83 BE NOT CONCURRED IN AS AMENDED, THE MOTION CARRIED by roll call vote.

EXECUTIVE ACTION ON HB 46

Motion/Vote: SENATOR DOHERTY MOVED THAT HB 46 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY on an oral vote.

EXECUTIVE ACTION ON HB 69

Motion/Vote: SENATOR NELSON MOVED THAT HB 69 BE CONCURRED IN.

Discussion: SENATOR HOLDEN stated that he believed SENATOR GAGE would agree that this bill was superior to the one he carried. He thought they should concur on this bill.

SENATOR NELSON wanted some clarification on the bill since she was to carry it on the floor. She asked Beth Baker of the

Department of Justice about Page 12, Section 15, Line 24, talking about expenses incurred in obtaining ordinary and necessary services that the victim would have performed if not injured. She asked if they intended to paint the house or pour a new driveway, would those things be covered? Beth Baker stated that the language was taken from the Uniform Crime Victims' Act, and would cover such situations such as the ordinary work of, for an example, a housewife: cooking and housework. The Senator inquired further about Page 14, Line 5, which spoke to the restitution to a person designated by the victim. Ms. Baker read further, "if that person provided services as a result of the offense." So, for example, if the victim hired someone to come in to give assistance, the victim could designate the person providing assistance, rather than the offender, but the offender would pay for the help.

Vote: The MOTION CARRIED UNANIMOUSLY on an oral vote.

EXECUTIVE ACTION ON HB 177

Motion: SENATOR AL BISHOP MOVED THAT HB 177 BE NOT CONCURRED IN.

Discussion: SENATOR BISHOP explained his motion. This bill would not entail just the recorders, he said, but would entail an horrendous amount of time in those courts. They are processing 300,000 cases a year, of which 469 were appealed, he said, which would only be one-fifth of one percent. He feared an eventual upgrading, including lawyers and justices of the peace, necessitating a four-tiered court system. SENATOR DOHERTY said they should count all of the costs of a trial in justice court and all of the costs of public defenders and county attorneys' time, as well as police time and investigation, and then conclude that it should be a vote for the bill. There are some initial outlays of cost, he said, but justice does cost money. The points made by the practicing county attorneys was clear. It would allow people two chances to get off, to avoid their responsibility and in many cases may endanger the public safety. It would reduce the workload of the district courts significantly, lead to more professionalism in the justice courts, and reduce hidden costs. SENATOR BARTLETT said she signed on the bill and thought at the time it was a good idea. She had spoken to the City Attorney from Helena and discovered that initially the city judges weren't terribly concerned, but over time as potential costs to the lower courts became more apparent to them, their concern grew. This is a substantial change that may be the first step of something the proponents did not intend, she said. She said she would be more comfortable if the Commission on Courts of Limited Jurisdiction or the Judicial Unification of Finance Commission had really examined these kinds of changes and come forward with a proposal that was perhaps more comprehensive to phase in the changes. SENATOR NELSON stated

DATE 3-2-95

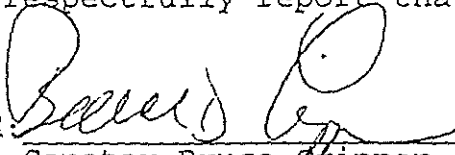
SEN:1995
wp.rollcall.man

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 2, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 69 (third reading copy -- blue), respectfully report that HB 69 be concurred in.

Signed: 
Senator Bruce Crippen, Chair

 Amd. Coord.

SA Sec. of Senate


Senator Carrying Bill

491210SC.SRF